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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DONALD H.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

Case No.: 20cv1123-RBB

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT [ECF NO. 13];
DENYING DEFENDANT'S CROSS-
MOTION FOR SUMMARY
JUDGMENT [ECF NO. 16]; AND
REMANDING CASE FOR
FURTHER PROCEEDINGS**

On June 18, 2020, Plaintiff Donald H.¹ commenced this action against Defendant Andrew Saul, Commissioner of Social Security, for judicial review under 42 U.S.C.

¹ The Court refers to Plaintiff using only his first name and last initial pursuant to the Court's Civil Local Rules. See S.D. Cal. Civ. R. 7.1(e)(6)(b).

1 § 405(g) of a final adverse decision for disability insurance benefits [ECF No. 1].²
2 Defendant filed the Administrative Record on March 19, 2021 [ECF No. 10]. The case
3 was transferred to this Court on April 19, 2021 [ECF No. 12]. On April 23, 2021,
4 Plaintiff filed a Motion for Summary Judgment [ECF No. 13]. Plaintiff consented to
5 have this Court conduct all proceedings in this case on April 27, 2021 [ECF No. 15].³
6 Defendant filed a Cross-Motion for Summary Judgment and Opposition to Plaintiff's
7 Motion for Summary Judgment on May 21, 2021 [ECF No. 16]. Plaintiff's Reply in
8 Support of Motion for Summary Judgment and in Opposition to Defendant's Cross-
9 Motion for Summary Judgment was filed on June 7, 2021 [ECF No. 17].

10 For the following reasons, Plaintiff's Motion for Summary Judgment is
11 **GRANTED**; Defendant's Cross-Motion for Summary Judgment is **DENIED**; and the
12 case is **REMANDED** for further proceedings.

13 I. BACKGROUND

14 Plaintiff Donald H. was born in 1968 and completed high school. (Admin. R. 33-
15 34, 164, ECF No. 10.)⁴ He previously worked as a heavy construction equipment
16 operator. (Id. at 34-35, 164.) On or about August 2, 2017, Donald H. filed an application
17 for disability insurance benefits under Title II of the Social Security Act. (Id. at 135-36.)
18 He alleged that he had been disabled since April 28, 2017, due to osteoarthritis of both
19 knees, lumbar disc disease, and nerve pain in his legs. (Id. at 135, 163.) Plaintiff's
20 application was denied on initial review and again on reconsideration. (Id. at 69-72, 76-
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23 ² Kilolo Kijakazi is now the Acting Commissioner of Social Security and is automatically substituted as
a party pursuant to Fed. R. Civ. P. 25(d).

24 ³ The United States has informed the Court of its general consent to Magistrate Judge jurisdiction in
cases of this nature.

25 ⁴ The administrative record is filed on the Court's docket as multiple attachments. The Court will cite to
26 the administrative record using the page references contained on the original document rather than the
page numbers designated by the Court's case management/electronic case filing system ("CM/ECF").
27 For all other documents, the Court cites to the page numbers affixed by CM/ECF.

1 80.) An administrative hearing was conducted on April 29, 2019, by Administrative Law
 2 Judge (“ALJ”) Mark B. Greenberg. (Id. at 30.) On May 21, 2019, the ALJ issued a
 3 decision and concluded that Donald H. was not disabled. (Id. at 17-25.) Plaintiff
 4 requested a review of the ALJ's decision; the Appeals Council denied the request on
 5 April 20, 2020. (Id. at 1-4.) Plaintiff then commenced this action pursuant to 42 U.S.C.
 6 § 405(g).

7 II. LEGAL STANDARDS

8 Sections 405(g) and 421(d) of the Social Security Act allow unsuccessful
 9 applicants to seek judicial review of a final agency decision of the Commissioner. 42
 10 U.S.C.A. §§ 405(g), 421(d) (West 2011). The scope of judicial review is limited,
 11 however, and the denial of benefits ““will be disturbed only if it is not supported by
 12 substantial evidence or is based on legal error.”” Brawner v. Sec'y of Health & Human
 13 Servs., 839 F.2d 432, 433 (9th Cir. 1988) (quoting Green v. Heckler, 803 F.2d 528, 529
 14 (9th Cir. 1986)); see also Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014).
 15 Substantial evidence means ““more than a mere scintilla but less than a preponderance; it
 16 is such relevant evidence as a reasonable mind might accept as adequate to support a
 17 conclusion.”” Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997) (quoting Andrews
 18 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)); see also Biestek v. Berryhill, ___ U.S.
 19 ___, ___, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d 504 (2019). The court must consider
 20 the entire record, including the evidence that supports and detracts from the
 21 Commissioner's conclusions. Desrosiers v. Sec'y of Health & Human Servs., 846 F.2d
 22 573, 576 (9th Cir. 1988). If the evidence supports more than one rational interpretation,
 23 the court must uphold the ALJ's decision. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir.
 24 2005); Ford v. Saul, 950 F.3d 1141, 1154 (9th Cir. 2020). The district court may affirm,
 25 modify, or reverse the Commissioner's decision. 42 U.S.C.A. § 405(g). The matter may
 26 also be remanded to the Social Security Administration for further proceedings. Id.

1 To qualify for disability benefits under the Social Security Act, a claimant must
2 show two things: (1) The applicant suffers from a medically determinable impairment
3 that can be expected to result in death or that has lasted or can be expected to last for a
4 continuous period of twelve months or more, and (2) the impairment renders the
5 applicant incapable of performing the work that he or she previously performed or any
6 other substantially gainful employment that exists in the national economy. See 42
7 U.S.C.A. §§ 423(d)(1)(A), (2)(A) (West 2011). An applicant must meet both
8 requirements to be classified as “disabled.” Id. The applicant bears the burden of
9 proving he or she was either permanently disabled or subject to a condition which
10 became so severe as to disable the applicant prior to the date upon which his or her
11 disability insured status expired. Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995).

12 The Commissioner makes this assessment by employing a five-step analysis
13 outlined in 20 C.F.R. § 404.1520. See also Tackett v. Apfel, 180 F.3d 1094, 1098-99
14 (9th Cir. 1999) (describing five steps). First, the Commissioner determines whether a
15 claimant is engaged in “substantial gainful activity.” If so, the claimant is not disabled.
16 20 C.F.R. § 404.1520(b) (2019). Second, the Commissioner determines whether the
17 claimant has a “severe impairment or combination of impairments” that significantly
18 limits the claimant's physical or mental ability to do basic work activities. If not, the
19 claimant is not disabled. Id. § 404.1520(c). Third, the medical evidence of the claimant's
20 impairment is compared to a list of impairments that are presumed severe enough to
21 preclude work; if the claimant's impairment meets or equals one of the listed
22 impairments, benefits are awarded. Id. § 404.1520(d). If not, the claimant’s residual
23 functional capacity is assessed and the evaluation proceeds to step four. Id.
24 § 404.1520(e). Fourth, the Commissioner determines whether the claimant can do his or
25 her past relevant work. If the claimant can do their past work, benefits are denied. Id.

1 § 404.1520(f). If the claimant cannot perform his or her past relevant work, the burden
 2 shifts to the Commissioner. In step five, the Commissioner must establish that the
 3 claimant can perform other work. Id. § 404.1520(g). If the Commissioner meets this
 4 burden and proves that the claimant is able to perform other work that exists in the
 5 national economy, benefits are denied. Id.

6 III. DISCUSSION

7 A. ALJ's Decision

8 In his decision, ALJ Greenberg employed the five-step sequential analysis set forth
 9 in 20 C.F.R. § 404.1520. The ALJ determined that Plaintiff had not engaged in
 10 substantial gainful activity since April 28, 2017, his alleged onset date (step one).
 11 (Admin. R. 19, ECF No. 10.) He found that Plaintiff had severe impairments including
 12 lumbar degenerative disc disease with radiculopathy to the left calf, sacroiliitis,⁵ and
 13 osteoarthritis of bilateral knees status post-right knee surgery (step two). (Id.) The ALJ
 14 stated that Plaintiff did not have an impairment or combination of impairments that met
 15 or medically equaled a listed impairment (step three). (Id. at 20.) He then found that
 16 Donald H. retained the residual functional capacity to perform light work with occasional
 17 operation of foot controls; occasional postural activities; no climbing ladders, ropes, or
 18 scaffolds; no concentrated exposure to temperature extremes; no more than occasional
 19 exposure to moving machinery; and no work at unprotected heights. (Id. at 21.) ALJ
 20 Greenberg next determined that Plaintiff was unable to perform his past relevant work as
 21 a heavy equipment operator (step four). (Id. at 24.) The ALJ concluded that Plaintiff
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 24 ⁵ Sacroiliitis is the inflammation of one or both of the sacroiliac joints, which are situated where the
 25 lower spine and pelvis connect. Sacroiliitis can cause pain in the buttocks or lower back and can extend
 26 down one or both legs. Prolonged standing or stair climbing may worsen the pain. See Mayo Clinic,
 27 [https://www.mayoclinic.org/diseases-conditions/sacroiliitis/symptoms-causes/syc-
 20350747#:~:text=Sacroiliitis%20\(say%2Dkroe%2Dil,climbing%20can%20worsen%20the%20pain](https://www.mayoclinic.org/diseases-conditions/sacroiliitis/symptoms-causes/syc-20350747#:~:text=Sacroiliitis%20(say%2Dkroe%2Dil,climbing%20can%20worsen%20the%20pain)
 (last visited Jan. 28, 2022).

1 was capable of performing the requirements of the representative occupations of hand
2 packager, garment sorter, and stock checker (step five). (Id. at 24-25.) ALJ Greenberg
3 accordingly found that Donald H. had not been under a disability from April 28, 2017,
4 through the date of his decision. (Id. at 25.)

5 **B. Plaintiff's Testimony Regarding the Severity of his Symptoms**

6 Plaintiff's sole contention is that the ALJ failed to articulate clear and convincing
7 reasons to reject his pain testimony. (Pl.'s Mot. Attach. #1 Mem. P. & A. 4-8, ECF No.
8 13.) At his hearing, Plaintiff testified that he stopped working because he "couldn't get
9 up" and "was laid up because of [my] back, mainly." (Admin. R. 35, ECF No. 10.) His
10 average pain level was nine on a scale of ten and his pain worsened by standing, sitting,
11 walking, and twisting. (Id. at 36.) He testified that he could only lift a half-gallon of
12 water. (Id.) He felt he could stand, walk, or sit for only twenty minutes a day and needed
13 to spend most of the day lying down. (Id. at 38.) Donald H. stated that he had knee
14 braces but could no longer put them on because of his back pain. (Id. at 40.) He had a
15 walking stick and cane but did not use them because they irritated his back. (Id. at 42.)

16 **C. ALJ Failed to Articulate Sufficient Reasons for Rejecting Plaintiff's**
17 **Subjective Symptom Testimony**

18 An ALJ engages in a two-step analysis to determine the extent to which a
19 claimant's report of symptoms must be credited. First, the ALJ must determine whether
20 the claimant has presented objective medical evidence of an underlying impairment
21 which could reasonably be expected to produce the pain or other symptoms alleged.
22 Trevizo v. Berryhill, 871 F.3d 664, 678 (9th Cir. 2017) (citing Garrison, 759 F.3d at
23 1014-15); see also SSR 16-3P, 2017 WL 5180304, at *3 (Oct. 25, 2017); 20 C.F.R. §
24 404.1529(b) (2019). In this analysis, the claimant is not required to show that his
25 impairment could reasonably be expected to cause the severity of the symptoms alleged;
26 nor is he required to produce objective evidence of the pain or its severity. Trevizo, 871
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1 F.3d at 678 (citing Garrison, 759 F.3d at 1014-15). Second, once an underlying physical
2 or mental impairment that could reasonably be expected to produce an individual's
3 symptoms is established, the ALJ evaluates the intensity and persistence of those
4 symptoms to determine the extent to which the symptoms limit the individual's ability to
5 perform work-related activities. SSR 16-3P, 2017 WL 5180304, at *3; 20 C.F.R. §
6 404.1529(c). It is the responsibility of the ALJ to determine credibility, resolve conflicts
7 in the testimony, and resolve ambiguities in the record. See Treichler v. Comm'r Soc.
8 Sec. Admin., 775 F.3d 1090, 1102 (9th Cir. 2014). Under well-established case law,
9 when the ALJ finds that a claimant “is not malingering and has provided objective
10 medical evidence of an underlying impairment which might reasonably produce the pain
11 or other symptoms [he] alleges, the ALJ may reject the claimant’s testimony about the
12 severity of those symptoms only by providing specific, clear, and convincing reasons for
13 doing so.” Lambert v. Saul, 980 F.3d 1266, 1277 (9th Cir. 2020) (citing Brown-Hunter v.
14 Colvin, 806 F.3d 487, 488-89 (9th Cir. 2015)). This requires the ALJ to “specifically
15 identify the testimony [from a claimant] she or he finds not to be credible and . . . explain
16 what evidence undermines that testimony.” Lambert, 980 F.3d at 1277 (citing Treichler,
17 775 F.3d at 1102). The clear and convincing standard is the most demanding required in
18 Social Security cases and is not an easy requirement to meet. Trevizo, 871 F.3d at 678
19 (citing Garrison, 759 F.3d at 1015).

20 **1. ALJ failed to specifically identify the testimony he found not to be**
21 **credible**

22 ALJ Greenberg determined that Donald H. satisfied step one of the two-step
23 analysis. (Admin. R. 23, ECF No. 10.) At the second step, the ALJ stated that
24 “[Plaintiff’s] statements concerning the intensity, persistence, and limiting effects of
25 these symptoms are not entirely consistent with the medical evidence and other evidence
26 in the record for the reasons explained in this decision.” (Id.) This language, which is
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1 routinely included in ALJ decisions denying benefits, is insufficient in and of itself to
2 meet the requirements set forth in Ninth Circuit authority to reject a plaintiff’s pain
3 testimony because it does not “identify what parts of the claimant’s testimony were not
4 credible and why.” See Lambert, 980 F.3d at 1277; Treichler, 775 F.3d at 1103. After
5 making this boilerplate statement, ALJs typically identify which parts of the claimant’s
6 testimony were not credible and why. Treichler, 775 F.3d at 1103. Here, however, the
7 ALJ did not do so. (See Admin. R. 24, ECF No. 10.) Instead, he proceeded with his
8 discussion of the medical opinions and prior administrative findings. (Id.)

9 “Because the grounds upon which an administrative order must be judged are those
10 upon which the record discloses that its action was based, the agency must explain its
11 reasoning.” Treichler, 775 F.3d at 1102 (internal citation and quotations omitted). The
12 Court has carefully reviewed the ALJ’s decision and is unable to clearly discern any
13 further reasons or explanation beyond the conclusory language cited above as to why
14 ALJ Greenberg rejected Donald H.’s symptom testimony. As in Lambert, the Court
15 therefore “cannot review whether the ALJ provided specific, clear, and convincing
16 reasons for rejecting [Plaintiff’s] pain testimony [because] . . . the ALJ never identified
17 which testimony [he] found not credible, and never explained which evidence
18 contradicted that testimony.” See Lambert, 980 F.3d at 1277 (citing Brown-Hunter, 806
19 F.3d at 494). And although ALJ Greenberg provided a relatively detailed synopsis of
20 Donald H.’s medical records, “providing a summary of medical evidence . . . is not the
21 same as providing clear and convincing reasons for finding the claimant’s symptom
22 testimony not credible.” Brown-Hunter, 806 F.3d at 494.

23 The ALJ thus committed legal error by failing to satisfy the requirement that he
24 specifically identify which part of Plaintiff’s testimony about the severity of his
25 symptoms he found not credible and explain the evidence that contradicted Plaintiff’s
26 testimony.

1 **2. Reasons purportedly offered by the ALJ insufficient to meet clear and**
2 **convincing standard**

3 Plaintiff generously reads the ALJ's decision as articulating two reasons for
4 rejecting Donald H.'s symptom testimony: (1) Plaintiff's symptoms were inconsistent
5 with the objective medical evidence, including diagnostic tests, physical examination
6 findings, and medical opinions; and (2) Plaintiff's pain levels improved and stabilized
7 with treatment. (Pl.'s Mot. 6-8, ECF No. 13.) Defendant suggests that the ALJ
8 articulated a third reason for rejecting Plaintiff's pain testimony: the medical opinions in
9 the record did not support Plaintiff's claim of disabling impairments. (Def.'s Opp'n &
10 Cross-Mot. 8, ECF No. 16.) The Court, as discussed above, does not read the ALJ's
11 decision as sufficiently articulating any specific reasons for rejecting Donald H.'s
12 testimony about the severity of his symptoms. While ALJ Greenberg did indicate the
13 three findings described by the parties in his decision, these findings are not clearly
14 delineated or explained as his reasons for discounting Donald H.'s symptom testimony.
15 The Court should not have to speculate as to the grounds for the ALJ's determinations.
16 See Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991). Nonetheless, even if the
17 decision could be read as the parties suggest, the Court still finds that the ALJ failed to
18 articulate sufficient clear and convincing reasons to reject Plaintiff's pain testimony.

19 **a. Objective medical evidence**

20 Defendant argues that the ALJ correctly found that the diagnostic tests and
21 physical examination findings in the record do not support Plaintiff's claim of disabling
22 impairments. (Def.'s Cross-Mot. & Opp'n 6-8, ECF No. 16.) Diagnostic tests and
23 physical examination findings are considered objective medical evidence. See 20 C.F.R.
24 § 404.1529(c)(2) (defining objective medical evidence as "evidence obtained from the
25 application of medically acceptable clinical and laboratory diagnostic techniques, such as
26 evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption").

1 Although an ALJ may consider whether the alleged symptoms are consistent with the
2 medical evidence as one factor in his evaluation, the ALJ may not disregard a claimant's
3 testimony "solely because it is not substantiated affirmatively by objective medical
4 evidence." See Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006); see also
5 20 C.F.R. § 404.1529(c)(2) ("[W]e will not reject your statements about the intensity and
6 persistence of your pain or other symptoms or about the effect your symptoms have on
7 your ability to work solely because the available objective medical evidence does not
8 substantiate your statements.").

9 In this case, the ALJ referred to objective medical evidence in the record to
10 demonstrate that the evidence generally showed normal or only mild findings. He
11 referenced Plaintiff's March 7, 2017 lumbar MRI, which showed "mild multilevel
12 spondylosis without a focal disc herniation, spinal stenosis, or nerve root impingement."
13 (Admin. R. 22, ECF No. 10, citing id. at 291.) Bilateral knee x-rays taken on June 8,
14 2017, and an MRI taken of Plaintiff's left knee on June 13, 2017, showed only mild
15 findings. (Id. at 23, citing id. at 282, 292.) A nerve conduction study performed on July
16 27, 2017, showed patterns inconsistent with "length-dependent large fiber
17 polyneuropathy" or radiculopathy. (Id. at 23, citing 271.) The ALJ also cited the
18 consultative orthopedic examination conducted by David T. Easley, M.D., on November
19 26, 2018, as evidence that Plaintiff exhibited normal findings upon physical examination.
20 (See id. at 23.) ALJ Greenberg noted that Donald H. demonstrated a normal gait, no need
21 for an assistive device to walk, no muscle spasm, equal muscle tone, negative straight leg
22 raising test, and full strength in his extremities. (Id., citing id. at 296, 297-98.) The ALJ
23 also correctly observed that Dr. Easley's physical examination showed some abnormal
24 findings, including reduced range of motion in Plaintiff's back and knees, tenderness to
25 palpation in the lumbar spine at L2 to L5 and over the right knee, and discomfort in the
26 right sacroiliac joint. (Id., citing id. at 296, 298.)

1 Substantial evidence is not a high bar. See Sandgathe 108 F.3d at 980
2 (“Substantial evidence is more than a mere scintilla but less than a preponderance; it is
3 such relevant evidence as a reasonable mind might accept as adequate to support a
4 conclusion.”) (internal quotations omitted). After considering the record as a whole and
5 evaluating both the evidence that supports and detracts from the Commissioner's
6 conclusion, (see Desrosiers, 846 F.2d at 576), the Court finds that substantial evidence in
7 the record supports the ALJ’s finding that Plaintiff’s subjective complaints were not fully
8 supported by the objective medical evidence in the record. But because an ALJ may not
9 disregard a claimant’s testimony “solely because it is not substantiated affirmatively by
10 objective medical evidence,” (see Robbins, 466 F.3d at 883), this reason in and of itself is
11 not a sufficient basis for the ALJ's adverse credibility finding. The ALJ was thus
12 required to articulate other clear and convincing reasons to discount Plaintiff’s pain
13 testimony.

14 **b. Improvement with treatment**

15 The ALJ noted in his decision that knee injections provided some improvement in
16 Plaintiff’s pain and states multiple times that Plaintiff’s “pain levels improved and
17 stabilized with treatment.” (Id. at 23, 24.) In assessing a claimant’s subjective
18 symptoms, an ALJ may also properly consider whether the claimant had a “fair response”
19 to treatment. See Odle v. Heckler, 707 F.2d 439, 440 (9th Cir. 1983); see also 20 C.F.R.
20 § 404.1529(c)(3)(v) (listing the treatment an individual has received for relief of pain or
21 other symptoms as a factor the ALJ may consider in evaluating symptoms). Plaintiff
22 testified that treatment such as medication, ice, heat, physical therapy, SI joint injections,
23 nerve blocks, and radiography ablation have helped his symptoms “a little bit.” (Admin.
24 R. 35, ECF No. 10.) He also testified that CBD oil helped his inflammation but he could
25 no longer afford it. (Id. at 40.)
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1 The record does not support the ALJ's interpretation of the medical evidence as
2 reflecting that Plaintiff's symptoms improved and stabilized with treatment. Although
3 the medical records indicated that injections to Donald H.'s knees helped, they also
4 reflect that the relief was temporary. For example, Plaintiff received bilateral knee joint
5 injections on September 20, 2018, but still complained of throbbing, deep, aching, and
6 stabbing knee pain at a level of eight out of ten just a month later, on October 25, 2018.
7 (Id. at 455, 459.) These records are consistent with Plaintiff's report to consultative
8 examiner Dr. Easley that knee injections provided relief for only three to four weeks. (Id.
9 at 295.) Similarly, Donald H. received bilateral sacroiliac ("SI") joint injections on
10 August 30, 2018. (Id. at 342.) While the ALJ cited a treatment note dated September 4,
11 2018, only four days later, to show that the injection provided some improvement in
12 Plaintiff's pain, (see id. at 422), the ALJ neglected that two months later, on October 25,
13 2018, Donald H. still complained of constant low back pain that he rated as eight on a
14 scale of ten and which radiated into his lower extremities. (Id. at 459.) This is consistent
15 with Plaintiff's report to his pain management doctor that the SI injections helped his
16 pain for a few weeks but it then recurred, leading the physician to recommend bilateral
17 lumbar facet intraarticular joint injections at L4, L5, S1. (Id. at 463, 465.)

18 "While ALJs obviously must rely on examples to show why they do not believe
19 that a claimant is credible, the data points they choose must in fact constitute examples of
20 a broader [course of improvement] to satisfy the applicable 'clear and convincing'
21 standard." Garrison, 759 F.3d at 1018. Here, ALJ Greenberg singled out notes reflecting
22 that injections provided "some improvement" to discredit Donald H. while ignoring that
23 the injections did not fully negate Plaintiff's pain and that any improvement was only
24 temporary. The ALJ's conclusion that Plaintiff's pain improved with treatment, absent
25 further explanation, thus did not provide a clear and convincing reason to reject
26 Plaintiff's symptom testimony.

1 **c. Medical opinion evidence**

2 Defendant also contends that ALJ Greenberg relied on the medical opinions in the
3 record in rejecting Donald H.’s pain allegations. (Def.’s Cross-Mot. & Opp’n 8, ECF No.
4 16.) The Commissioner’s observation that the state agency physicians and the
5 consultative examiner, Dr. Easley, opined that Plaintiff’s impairments were not disabling
6 is factually accurate; still, her argument is unpersuasive for two reasons. First, the ALJ
7 did not specify that the medical opinion evidence constituted a basis for rejecting Donald
8 H.’s subjective symptom testimony. Rather, the purpose of the ALJ’s discussion of the
9 medical opinion evidence was to articulate which opinions he found persuasive and
10 which he found not persuasive in conjunction with his determination of Plaintiff’s
11 residual functional capacity (“RFC”). (See Admin. R. 24-25, ECF No. 10; see also 20
12 C.F.R. § 404.1545(a)(3) (2019)). A statement by the ALJ finding that the claimant’s
13 symptoms are not consistent with the evidence followed by a summary of the opinion
14 evidence supporting his RFC determination is “not the sort of explanation or the kind of
15 ‘specific reasons’ we must have in order to review the ALJ’s decision meaningfully, so
16 that we may ensure that the claimant’s testimony was not arbitrarily discredited.” Brown-
17 Hunter, 806 F.3d at 494. Moreover, the Court is “constrained to review the reasons the
18 ALJ asserts.” Id. at 492. “Long-standing principles of administrative law require us to
19 review the ALJ’s decision based on the reasoning and factual findings offered by the
20 ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have
21 been thinking.” Bray v. Comm’s Soc. Sec. Admin., 554 F.3d 1219, 1225 (9th Cir. 2009).

22 Second, even if the medical opinions did serve as a basis for the ALJ to discredit
23 Plaintiff’s allegations of disabling pain, the cases relied on by the Commissioner do not
24 support the proposition that medical opinions may constitute a reason, separate from
25 objective medical evidence, to reject a claimant’s symptom testimony. (See Def.’s
26 Cross-Mot. & Opp’n 8, ECF No. 16.) In Stubbs-Danielson v. Astrue, 539 F.3d 1169 (9th
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1 Cir. 2008), the Ninth Circuit found that the ALJ did not err in evaluating the claimant's
2 subjective complaints because the claimant's daily activities suggested that she could still
3 perform work, and noted as an aside that two doctors' reports supported the ALJ's
4 credibility determination. Id. at 1175. The court did not hold that medical opinions
5 could independently constitute a clear and convincing reason to reject a claimant's
6 statements about the severity of his symptoms. And although the court in Moncada v.
7 Chater, 60 F.3d 521 (9th Cir. 1995), upheld the ALJ's reliance on a doctor's report to
8 discredit the plaintiff's pain testimony, that ALJ, unlike ALJ Greenberg here, articulated
9 other clear and convincing reasons, beyond the doctor's report, to support his finding.

10 In sum, the ALJ, at best, articulated one specific reason for rejecting Donald H.'s
11 testimony about the intensity, persistence, and limiting effects of his impairments: that
12 the objective medical evidence did not support his allegations. Ninth Circuit authority
13 does not permit the ALJ to rely solely on this reason. (See Robbins, 466 F.3d at 883.)
14 Accordingly, the ALJ did not meet his burden of sufficiently articulating specific, clear,
15 and convincing reasons to discount Plaintiff's symptom testimony.

16 C. Remedy

17 Plaintiff argues that the proper remedy in this case is remand for the payment of
18 benefits. (Pl.'s Mot. Attach. #1 Mem. P. & A. 8, ECF No. 13.) The Commissioner
19 contends that the case should be remanded for further administrative proceedings if the
20 Court finds any grounds for overturning the agency's decision. (Def.'s Cross-Mot. &
21 Opp'n 10, ECF No. 16.) The decision whether to remand for further proceedings or for
22 immediate payment of benefits is within the discretion of the court. 42 U.S.C. § 405(g);
23 Treichler, 775 F.3d at 1090. A remand for an immediate award of benefits is appropriate
24 only in rare circumstances. See Brown-Hunter, 806 F.3d at 495. "If additional
25 proceedings can remedy defects in the original administrative proceedings, a social
26 security case should be remanded." Lewin v. Schweiker, 654 F.2d 631, 635 (9th Cir.

1 1981). Here, although the Court finds that the ALJ committed legal error in his
2 evaluation of Plaintiff's subjective symptom testimony, the Court is not satisfied that
3 further administrative proceedings would serve no useful purpose. Accordingly, remand
4 is appropriate.


5 **IV. CONCLUSION**

6 For the reasons stated above, Plaintiff's Motion for Summary Judgment is
7 **GRANTED**; Defendant's Cross-Motion for Summary Judgment is **DENIED**; and the
8 case is **REMANDED** for further proceedings.

9 This Order concludes the litigation in this matter. The Clerk shall close the file.

10 **IT IS SO ORDERED.**

11 Dated: February 9, 2022

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13 Hon. Ruben B. Brooks
14 United States Magistrate Judge
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