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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FRANCISCO C.,  
  
Plaintiff,  
  
v.  
  
KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No.: 20cv2092-RBB

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT [ECF NO. 14];  
DENYING DEFENDANT'S CROSS-  
MOTION FOR SUMMARY  
JUDGMENT [ECF NO. 15]; AND  
REMANDING CASE FOR  
FURTHER PROCEEDINGS**

On October 23, 2020, Plaintiff Francisco C.<sup>1</sup> commenced this action against Defendant Andrew Saul, Commissioner of Social Security, for judicial review under 42 U.S.C. § 405(g) of a final adverse decision for supplemental security income benefits

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<sup>1</sup> 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 [ECF No. 1].<sup>2</sup> Plaintiff consented to have this Court conduct all proceedings in this case  
2 on October 29, 2020 [ECF No. 7].<sup>3</sup> Defendant filed the Administrative Record on June 2,  
3 2021 [ECF No. 12]. On July 6, 2021, Plaintiff filed a Motion for Summary Judgment  
4 [ECF No. 14]. Defendant filed a Cross-Motion for Summary Judgment and Opposition  
5 to Plaintiff's Motion for Summary Judgment on August 5, 2021 [ECF No. 15]. Plaintiff's  
6 Reply was filed on August 6, 2021 [ECF No. 16].

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

### 10 I. BACKGROUND

11 Plaintiff Francisco C. was born in 1972 and previously worked as a pipe fitter from  
12 1994 to 2006 and 2011 to 2013. (Admin. R. 204, 274, ECF No. 12.)<sup>4</sup> Plaintiff  
13 underwent multiple surgeries after sustaining a work injury to his left hand around 2004  
14 or 2006, including grafting in his left ring finger, surgery on his left thumb, and bilateral  
15 carpal tunnel surgeries. (Id. at 277, 318.) On or about September 26, 2018, Plaintiff filed  
16 an application for supplemental security income benefits under Title XVI of the Social  
17 Security Act. (Id. at 98, 204-12.)<sup>5</sup> He alleged that he had been disabled since December  
18 31, 2011, due to degenerative disc disease, arthritis, and carpal tunnel syndrome. (Id. at  
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21 <sup>2</sup> 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).

22 <sup>3</sup> The United States has informed the Court of its general consent to Magistrate Judge jurisdiction in  
cases of this nature.

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

25 <sup>5</sup> Francisco C. previously filed an application for disability benefits on February 24, 2014, in which he  
26 alleged that he had been disabled since November 10, 2011. (Admin. R. 80, ECF No. 12.) On  
December 1, 2016, Administrative Law Judge Robin L. Henrie found that Plaintiff was not disabled  
27 from November 10, 2011, through March 31, 2015, the date last insured. (Id. at 91-92.)

1 238.)<sup>6</sup> Francisco C.’s application was denied on initial review and again on  
2 reconsideration. (Id. at 132-36, 141-46.) An administrative hearing was conducted by  
3 telephone on April 2, 2020, by Administrative Law Judge (“ALJ”) James Delphey. (Id.  
4 at 36.) On June 3, 2020, the ALJ issued a decision and concluded that Francisco C. was  
5 not disabled. (Id. at 20-31.) Plaintiff requested a review of the ALJ’s decision; the  
6 Appeals Council denied the request on September 24, 2020. (Id. at 1-3.) He then  
7 commenced this action pursuant to 42 U.S.C. § 405(g).

## 8 **II. LEGAL STANDARDS**

9 Sections 405(g) and 421(d) of the Social Security Act allow unsuccessful  
10 applicants to seek judicial review of a final agency decision of the Commissioner. 42  
11 U.S.C.A. § 405(g), 421(d) (West 2011). The scope of judicial review is limited,  
12 however, and the denial of benefits ““will be disturbed only if it is not supported by  
13 substantial evidence or is based on legal error.”” Browner v. Sec’y of Health & Human  
14 Servs., 839 F.2d 432, 433 (9th Cir. 1988) (quoting Green v. Heckler, 803 F.2d 528, 529  
15 (9th Cir. 1986)); see also Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014).  
16 Substantial evidence means ““more than a mere scintilla but less than a preponderance; it  
17 is such relevant evidence as a reasonable mind might accept as adequate to support a  
18 conclusion.”” Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997) (quoting Andrews  
19 v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)); see also Biestek v. Berryhill, \_\_\_ U.S.  
20 \_\_\_, \_\_\_, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d 504 (2019). The court must consider  
21 the entire record, including the evidence that supports and detracts from the  
22 Commissioner’s conclusions. Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d  
23 573, 576 (9th Cir. 1988). If the evidence supports more than one rational interpretation,  
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27 <sup>6</sup> During the administrative hearing, Plaintiff amended the onset date to the application date of  
September 26, 2018. (Admin. R. 44-45, 244, ECF No. 12.)

1 the court must uphold the ALJ's decision. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir.  
2 2005); Ford v. Saul, 950 F.3d 1141, 1154 (9th Cir. 2020). The district court may affirm,  
3 modify, or reverse the Commissioner's decision. 42 U.S.C.A. § 405(g). The matter may  
4 also be remanded to the Social Security Administration for further proceedings. Id.

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

16 In supplemental security income cases, the Commissioner makes this assessment  
17 by employing a five-step analysis outlined in 20 C.F.R. § 416.920. See also Tackett v.  
18 Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999) (describing five steps). First, the  
19 Commissioner determines whether a claimant is engaged in “substantial gainful activity.”  
20 If so, the claimant is not disabled. 20 C.F.R. § 416.920(b) (2019). Second, the  
21 Commissioner determines whether the claimant has a “severe impairment or combination  
22 of impairments” that significantly limits the claimant's physical or mental ability to do  
23 basic work activities. If not, the claimant is not disabled. Id. § 416.920(c). Third, the  
24 medical evidence of the claimant's impairment is compared to a list of impairments that  
25 are presumed severe enough to preclude work; if the claimant's impairment meets or  
26 equals one of the listed impairments, benefits are awarded. Id. § 416.920(d). If not, the  
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1 claimant's residual functional capacity is assessed and the evaluation proceeds to step  
2 four. Id. § 416.920(e). Fourth, the Commissioner determines whether the claimant can  
3 do his or her past relevant work. If the claimant can do their past work, benefits are  
4 denied. Id. § 416.920(f). If the claimant cannot perform his or her past relevant work,  
5 the burden shifts to the Commissioner. In step five, the Commissioner must establish that  
6 the claimant can perform other work. Id. § 416.920(g). If the Commissioner meets this  
7 burden and proves that the claimant is able to perform other work that exists in the  
8 national economy, benefits are denied. Id.

### 9 III. DISCUSSION

#### 10 A. ALJ's Decision

11 In his decision, ALJ Delphrey employed the five-step sequential analysis set forth  
12 in 20 C.F.R. § 416.920. The ALJ determined that Plaintiff had not engaged in substantial  
13 gainful activity since September 26, 2018, his amended onset date (step one). (Admin. R.  
14 22, ECF No. 12.) He concluded that Francisco C. had severe impairments: degenerative  
15 disc disease of the lumbar spine; incipient osteoarthritis of the knees; status-post 2015  
16 arthroscopic surgery on the left knee; bilateral carpal tunnel syndrome; status-post remote  
17 carpal tunnel release procedures; and bilateral foot pain, status-post 2015 arthroscopic  
18 right foot surgery (step two). (Id. at 24.)<sup>7</sup> The ALJ stated that Plaintiff did not have an  
19 impairment or combination of impairments that met or medically equaled a listed  
20 impairment (step three). (Id.) He then found that Francisco C. retained the residual  
21 functional capacity to perform light work, except he was unable to climb ladders, ropes,  
22 or scaffolds; could occasionally climb ramps and stairs, stoop, kneel, crouch, and crawl;  
23 was able to frequently balance; could frequently reach, handle, finger, and feel

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26 <sup>7</sup> The ALJ found Plaintiff's hypertension; partial avulsion of tip of left finger, status post grafting;  
27 internal derangement of the metacarpophalangeal joint of the left thumb, status post surgery; and  
depressive disorder to be non-severe impairments. (Admin. R. 23-24, ECF No. 12.)

1 bilaterally; and would need to avoid unprotected heights, working around dangerous  
2 machinery, or walking on uneven terrain. (Id.) ALJ Delphey next determined that  
3 Plaintiff was unable to perform his past relevant work as a pipe fitter (step four). (Id. at  
4 29.) The ALJ concluded that Plaintiff was capable of performing the requirements of the  
5 representative unskilled light occupations of bench assembler, inspector hand packager,  
6 and final inspector, as well as unskilled sedentary occupations of semiconductor loader,  
7 final assembler, and table worker (step five). (Id. at 30.) ALJ Delphey accordingly  
8 found that Francisco C. had not been under a disability from September 26, 2018,  
9 through the date of his decision. (Id.)

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

11 Plaintiff's sole contention is that the ALJ failed to articulate clear and convincing  
12 reasons to reject his pain testimony. (Pl.'s Mot. Attach. #1 Mem. P. & A. 3-8, ECF No.  
13 14.) At his hearing, Plaintiff testified that he has carpal tunnel in both hands, for which  
14 he has had multiple surgeries, and at times he cannot move his hands and "it hurts so  
15 much that I cry." (Admin. R. 48-49, ECF No. 12.) He stated that he "drop[s] stuff out of  
16 [his] hands" and cannot squeeze a spray bottle trigger more than five times before  
17 needing to switch hands. (Id. at 62.) He testified that he cannot sit for more than ten to  
18 twenty minutes without moving around because of back pain. (Id. at 48.) He previously  
19 had surgery on his left knee and has arthritis in his right foot. (Id. at 60.) He can walk  
20 normally for a few steps but his left foot hurts after walking more than twenty to thirty  
21 steps, and he cannot climb stairs because of his knees. (Id. at 60.) He was prescribed  
22 Duloxetine and referred to a psychiatrist to address his mental health. (Id. at 50-51.)  
23 Francisco J. testified that he lived comfortably in the garage of his parents' home and  
24 spent his time cooking for his two children, ages 23 and 17, cleaning up the kitchen, and  
25 watching the news. (Id. at 46, 51, 52-53.) He was recently remarried and traveled by  
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1 trolley each weekend to Tijuana, Mexico, where his wife lives, to spend time with her.  
2 (Id. at 55-56, 58-59.)

3 **C. ALJ Failed to Articulate Sufficient Reasons for Rejecting Plaintiff’s**  
4 **Subjective Symptom Testimony**

5 Plaintiff makes one argument: the ALJ failed to articulate specific, clear, and  
6 convincing reasons to reject his testimony regarding the severity of his symptoms. (Pl.’s  
7 Mot. Attach. #1 Mem. P. & A. 3-8, ECF No. 14.) He contends that the ALJ’s reliance on  
8 the medical evidence to discount Plaintiff’s credibility was insufficient as a matter of law.  
9 (Id. at 6.) Plaintiff maintains that the ALJ failed to “make the necessary link between  
10 [Francisco C.’s] testimony and the evidence that rebuts that testimony.” (Id. at 7.)  
11 Further, he argues that ALJ Delphrey “did not point to anything other than an alleged lack  
12 of objective support to reject [Plaintiff’s] testimony.” (Id.)

13 An ALJ engages in a two-step analysis to determine the extent to which a  
14 claimant’s report of symptoms must be credited. First, the ALJ must decide whether the  
15 claimant has presented objective medical evidence of an underlying impairment which  
16 could reasonably be expected to produce the pain or other symptoms alleged. Trevizo v.  
17 Berryhill, 871 F.3d 664, 678 (9th Cir. 2017) (citing Garrison, 759 F.3d at 1014-15); see  
18 also SSR 16-3P, 2017 WL 5180304, at \*3 (Oct. 25, 2017); 20 C.F.R. § 416.929(b)  
19 (2019). In this analysis, the claimant is not required to show that his impairment could  
20 reasonably be expected to cause the severity of the symptoms alleged nor is he required  
21 to produce objective evidence of the pain or its severity. Trevizo, 871 F.3d at 678 (citing  
22 Garrison, 759 F.3d at 1014-15). Second, once an underlying physical or mental  
23 impairment that could reasonably be expected to produce an individual's symptoms is  
24 established, the ALJ evaluates the intensity and persistence of those symptoms to  
25 determine the extent to which they limit the individual's ability to perform work-related  
26 activities. SSR 16-3P, 2017 WL 5180304, at \*3; 20 C.F.R. § 416.929(c). It is the  
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1 responsibility of the ALJ to determine credibility, resolve conflicts in the testimony, and  
2 resolve ambiguities in the record. See Treichler v. Comm’r of Soc. Sec. Admin., 775  
3 F.3d 1090, 1102 (9th Cir. 2014).

4 Under well-established case law, when the ALJ finds that a claimant “is not  
5 malingering and has provided objective medical evidence of an underlying impairment  
6 which might reasonably produce the pain or other symptoms [he] alleges, the ALJ may  
7 reject the claimant’s testimony about the severity of those symptoms only by providing  
8 specific, clear, and convincing reasons for doing so.” Lambert v. Saul, 980 F.3d 1266,  
9 1277 (9th Cir. 2020) (citing Brown-Hunter v. Colvin, 806 F.3d 487, 488-89 (9th Cir.  
10 2015)). This requires the ALJ to “specifically identify the testimony [from a claimant]  
11 she or he finds not to be credible and . . . explain what evidence undermines that  
12 testimony.” Lambert, 980 F.3d at 1277 (citing Treichler, 775 F.3d at 1102). The clear  
13 and convincing standard is the most demanding required in Social Security cases and is  
14 not an easy requirement to meet. Trevizo, 871 F.3d at 678 (citing Garrison, 759 F.3d at  
15 1015).

16 **1. ALJ failed to specifically identify the testimony he found not to be**  
17 **credible**

18 Here, ALJ Delphey determined that Francisco C. satisfied step one of the two-step  
19 analysis. (Admin. R. 25, ECF No. 12.) At the second step, the ALJ stated that  
20 “[Plaintiff’s] statements concerning the intensity, persistence and limiting effects of these  
21 symptoms are not entirely consistent with the medical evidence and other evidence in the  
22 record for the reasons explained in this decision.” (Id.) This language, which is routinely  
23 included in ALJ decisions denying benefits, is insufficient in and of itself to meet the  
24 requirements set forth in Ninth Circuit authority to reject a plaintiff’s pain testimony  
25 because it does not “identify what parts of the claimant’s testimony were not credible and  
26 why.” See Lambert, 980 F.3d at 1277; Treichler, 775 F.3d at 1103. After making this  
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1 boilerplate statement, ALJs typically identify which parts of the claimant’s testimony  
2 were not credible and why. Treichler, 775 F.3d at 1103. In this case, however, the ALJ  
3 stated only that, “[t]he longitudinal record does not support a finding that the claimant's  
4 impairments are so severe as to be fully disabling[,]” (see Admin. R. 25, ECF No. 12),  
5 and then proceeded with his discussion of the medical evidence, medical opinions, and  
6 prior administrative findings, (see id. at 25-29).

7 “Because the grounds upon which an administrative order must be judged are those  
8 upon which the record discloses that its action was based, the agency must explain its  
9 reasoning.” Treichler, 775 F.3d at 1102 (internal citation and quotations omitted). The  
10 Court should not have to speculate as to the grounds for the ALJ’s determinations. See  
11 Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991). The Court has carefully reviewed  
12 the ALJ Delphey’s decision and is, beyond the conclusory language cited above, unable  
13 to clearly discern any specific reasons or explanation as to why he rejected Francisco C.’s  
14 symptom testimony. As in Lambert, the Court therefore “cannot review whether the ALJ  
15 provided specific, clear, and convincing reasons for rejecting [Plaintiff’s] pain testimony  
16 [because] . . . the ALJ never identified which testimony [he] found not credible, and  
17 never explained which evidence contradicted that testimony.” See Lambert, 980 F.3d at  
18 1277 (citing Brown-Hunter, 806 F.3d at 494). And although ALJ Delphey provided a  
19 relatively detailed synopsis of Francisco C.’s medical records, (see Admin. R. 25-29),  
20 “providing a summary of medical evidence . . . is not the same as providing clear and  
21 convincing reasons for finding the claimant’s symptom testimony not credible.” Brown-  
22 Hunter, 806 F.3d at 494.

23 Ninth Circuit precedent clearly required the ALJ to do more than was done here,  
24 which consisted of offering non-specific conclusions that Plaintiff's testimony was  
25 inconsistent with his medical treatment. See Lambert, 980 F.3d at 1277. The ALJ thus  
26 committed legal error by failing to specifically identify which part of Plaintiff’s  
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1 testimony about the severity of his symptoms he found not credible and link that  
2 testimony to evidence that contradicted Plaintiff's testimony.

3 **2. Defendant's arguments that ALJ properly articulated findings**  
4 **regarding Plaintiff's subjective allegations are unpersuasive**

5 Defendant asserts that when the medical evidence in the record "actually  
6 contradicts a claimant's subjective claims (as opposed to not just supporting them)," this  
7 constitutes a valid reason to discount the subjective allegations. (Def.'s Cross-Mot. &  
8 Opp'n 6, ECF No. 15.) She then cites ALJ Delphey's statement that "the claimant's  
9 statements concerning the intensity, persistence and limiting effects of these symptoms  
10 are not entirely consistent with the medical evidence and other evidence in the record for  
11 the reasons," as the ALJ's express finding that the medical evidence affirmatively  
12 contradicted Plaintiff's testimony. (Id., citing Admin. R. 25, ECF No. 12.) The problem  
13 with Defendant's argument is that this cited language is, as discussed above, routinely  
14 included in ALJ decisions denying benefits and has specifically been identified by the  
15 Ninth Circuit as insufficient to reject a plaintiff's pain testimony because it does not  
16 "identify what parts of the claimant's testimony were not credible and why." See  
17 Lambert, 980 F.3d at 1277; Treichler, 775 F.3d at 1103. Although ALJ Delphey  
18 provided an overview of Francisco C.'s medical records after the above-cited statement,  
19 "providing a summary of medical evidence . . . is not the same as providing clear and  
20 convincing reasons for finding the claimant's symptom testimony not credible." Brown-  
21 Hunter, 806 F.3d at 494; see also Bunnell, 947 F.2d at 346 ("[A] reviewing court should  
22 not be forced to speculate as to the grounds for an [ALJ's] rejection of a claimant's  
23 allegations of disabling pain."). Furthermore, the majority of the findings included in  
24 ALJ Delphey's discussion of the medical evidence were objective findings, including  
25 negative straight leg raise tests, x-ray and MRI findings, and showings of full ranges of  
26 motion and strength. (See Admin. R. 25-27, ECF No. 12; see also 20 C.F.R. §  
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1 416.929(c)(2) (defining objective medical evidence as “evidence obtained from the  
2 application of medically acceptable clinical and laboratory diagnostic techniques, such as  
3 evidence of reduced joint motion, muscle spasm, sensory deficit or motor disruption”).  
4 While an ALJ may consider whether the alleged symptoms are consistent with the  
5 medical evidence as one factor in his evaluation, the ALJ may not disregard a claimant’s  
6 testimony “solely because it is not substantiated affirmatively by objective medical  
7 evidence.” See Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006); see also  
8 20 C.F.R. § 416.929(c)(2) (“[W]e will not reject your statements about the intensity and  
9 persistence of your pain or other symptoms or about the effect your symptoms have on  
10 your ability to work solely because the available objective medical evidence does not  
11 substantiate your statements.”).<sup>8</sup>

12 Defendant also contends that ALJ Delphey could properly rely on the medical  
13 opinions in the record to reject Francisco C.’s pain allegations. (Def.’s Cross-Mot. &  
14 Opp’n 7, ECF No. 15.) The Commissioner’s argument that four separate medical  
15 opinions, including the opinions of the orthopedic consultative examiner, Dr. Thomas  
16 Sabourin, the internal medical consultative examiner, Dr. Phong Dao, and two state  
17 agency physicians, Drs. Julie Chu and Roberta Herman, (see Admin. R. 28-29, ECF No.  
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20 <sup>8</sup> The Commissioner argues that the ALJ relied on inconsistencies between Plaintiff’s statements that he  
21 used an assistive device for ambulation and medical evidence reflecting that he had normal gait and did  
22 not walk with an assistive device to discount Francisco C.’s subjective allegations. (Def.’s Opp’n &  
23 Cross-Mot. 6, ECF No. 15, citing Admin. R. 25-27, ECF No. 12.) The ALJ did not, however,  
24 specifically identify this as a reason to discount Plaintiff’s subjective symptoms. Additionally, even  
25 though Plaintiff’s disability forms reflect that he used a cane, (see Admin. R. 243, 267, 279, ECF No.  
26 12), these forms were prepared by Francisco C.’s attorney, not Plaintiff himself, (see id. at 238, 266,  
27 279). Plaintiff, when asked about using a cane at his administrative hearing, affirmatively denied using  
28 one. (See id. at 59 (“I don’t use a cane but I limp.”).) In other words, Plaintiff’s direct testimony that he  
did not use a cane was not in conflict with the medical records reflecting that he did not use an assistive  
device. Thus, even if the ALJ had offered these inconsistencies in the record as a reason to discount  
Plaintiff’s pain allegations, they would not constitute a clear and convincing reason absent further  
explanation or clarification.

1 12), supported the ALJ’s finding that Plaintiff was capable of more than he alleged is  
2 unpersuasive because the ALJ did not specify that the medical opinion evidence  
3 constituted a basis for rejecting Francisco C.’s subjective symptom testimony. Indeed,  
4 the ALJ is required to articulate how persuasive he finds each medical opinion in the  
5 record in every decision. See 20 C.F.R. § 416.920c(b). Thus, a statement that the  
6 claimant’s symptoms are not consistent with the evidence followed by a summary of the  
7 opinion evidence supporting his residual functional capacity determination is “not the  
8 sort of explanation or the kind of ‘specific reasons’ we must have in order to review the  
9 ALJ’s decision meaningfully, so that we may ensure that the claimant’s testimony was not  
10 arbitrarily discredited.” Brown-Hunter, 806 F.3d at 494. Moreover, the Court is  
11 “constrained to review the reasons the ALJ asserts.” Id. at 492. “Long-standing  
12 principles of administrative law require us to review the ALJ’s decision based on the  
13 reasoning and factual findings offered by the ALJ—not post hoc rationalizations that  
14 attempt to intuit what the adjudicator may have been thinking.” Bray v. Comm’r of Soc.  
15 Sec. Admin., 554 F.3d 1219, 1225 (9th Cir. 2009).

16 In sum, the ALJ committed legal error by failing to provide specific, clear, and  
17 convincing reasons to reject the Plaintiff’s testimony about the severity of his symptoms.

18 **D. Remedy**

19 Plaintiff argues that the proper remedy in this case is remand for the payment of  
20 benefits or, in the alternative, remand for further proceedings. (Pl.’s Mot. Attach. #1  
21 Mem. P. & A. 8-9, ECF No. 14.) The Commissioner contends that the case should be  
22 remanded for further administrative proceedings if the Court finds any grounds for  
23 overturning the agency’s decision. (Def.’s Cross-Mot. & Opp’n 8, ECF No. 15.) The  
24 decision whether to remand for further proceedings or for immediate payment of benefits  
25 is within the discretion of the court. 42 U.S.C. § 405(g); Treichler, 775 F.3d at 1099). A  
26 remand for an immediate award of benefits is appropriate only in rare circumstances. See  
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1 Brown-Hunter, 806 F.3d at 495. “If additional proceedings can remedy defects in the  
2 original administrative proceedings, a social security case should be remanded.” Lewin  
3 v. Schweiker, 654 F.2d 631, 635 (9th Cir. 1981). Here, although the Court finds that the  
4 ALJ committed legal error in his evaluation of Plaintiff’s subjective symptom testimony,  
5 the Court is not satisfied that further administrative proceedings would serve no useful  
6 purpose. Accordingly, remand is appropriate.


7 **IV. CONCLUSION**

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

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

12 **IT IS SO ORDERED.**

13 Dated: March 31, 2022

14   
15 Hon. Ruben B. Brooks  
16 United States Magistrate Judge  
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