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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 TONI DAWN RUDOLPH,
11 Plaintiff,
12 v.
13 KILOLO KIJAKAZI, Acting
14 Commissioner of Social Security,
15 Defendant.

Case No.: 3:21-cv-00919-H-AGS

**ORDER GRANTING IN PART
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT, DENYING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT, AND
REMANDING FOR FURTHER
CONSIDERATION.**

[Doc. Nos. 17, 22.]

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19 On May 13, 2021, Plaintiff Toni Dawn Rudolph (“Plaintiff”) filed a complaint
20 against Defendant Andrew Saul,¹ Commissioner of Social Security (“Commissioner”),
21 seeking judicial review of an administrative denial of disability benefits under the Social
22 Security Act (“SSA”). (Doc. No. 1.) On January 28, 2022, the Commissioner lodged the
23 administrative record. (Doc. No. 11.) On April 26, 2022, Plaintiff filed a motion for
24 summary judgment. (Doc. No. 17.) On June 23, 2022, the Commissioner filed a cross-
25 motion for summary judgment and opposition to Plaintiff’s motion. (Doc. No. 22.) The
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27 ¹ Kilolo Kijakazi, Acting Commissioner of the Social Security Administration, is
28 substituted for her predecessor, Andrew Saul, Commissioner of Social Security, pursuant
to Fed. R. Civ. P. 25(d).

1 Court held a hearing on the motion for summary judgment on July 25, 2022. (Doc. No.
2 24.) Denise Haley appeared on behalf of the Plaintiff and Tina Naicker appeared on behalf
3 of the Commissioner. For the reasons below, the Court grants in part Plaintiff’s motion for
4 summary judgment, denies the Commissioner’s cross-motion for summary judgment, and
5 vacates and remands the Commissioner’s decision.

6 **BACKGROUND**

7 Plaintiff was born in 1962. (Administrative Record (“AR”) 299.) Plaintiff last
8 worked in March 2019 as a delivery driver. (AR 259.) Prior to that employment, Plaintiff
9 worked part-time as a fruit arranger for a fruit bouquet business for two months in 2018, a
10 delivery driver from May 2015 to October 2016, a caregiver from 2006 to August 2013,
11 and a dog groomer from February 2002 to September 2005. (Id.) She has a high school
12 education, and she was enrolled in an online college at the time of her claim hearing. (Id.
13 at 55-56.)

14 On May 8, 2019, Plaintiff filed an application pursuant to Title II of SSA for
15 disability insurance benefits and an application pursuant to Title XVI of the SSA for
16 Supplemental Security Income benefits. (Id. at 38, 202-226, 250-51.) In her application
17 for disability benefits, Plaintiff asserted disability resulting from neuropathy, chronic
18 obstructive pulmonary disease (“COPD”), asthma, obesity (weight 292 pounds),
19 hypertension, hyperlipodemia, lymphedema in both legs, venous thromboembolism in her
20 left leg, and a history of breast cancer. (Id. at 204, 251.)

21 On July 9, 2019, the Commissioner denied Plaintiff’s application. (Id. at 114-17.)
22 On September 12, 2019, the Commissioner denied Plaintiff’s application for
23 reconsideration. (Id. at 130-36.) On September 25, 2019, Plaintiff requested a hearing on
24 the benefit determination. (Id. at 137-38.) On July 21, 2020, Administrative Law Judge
25 (“ALJ”) Howard K. Treblin held a hearing on Plaintiff’s claim. (Id. at 52.) Plaintiff
26 appeared at the hearing and was represented by Attorney Ms. Nicole Steinhaus. (Id.) Ms.
27 Gloria Lasoff, a vocational expert, also appeared at the hearing. (Id.)

28 On September 14, 2020, the ALJ issued a written decision concluding that Plaintiff

1 was not disabled within the meanings of the SSA from February 15, 2019 through the date
2 of the ALJ’s decision. (Id. at 46.) On November 13, 2020, Plaintiff requested review of
3 the ALJ’s decision by the Appeals Council. (Id. at 199-201.) On March 24, 2021, the
4 Appeals Council denied Plaintiff’s request for review and finalized the ALJ’s decision. (Id.
5 at 1-6.) Thus, the ALJ decision became the final decision of the Commissioner.

6 DISCUSSION

7 **I. Legal Standards**

8 **A. Standard for Determining Disability**

9 In order to be disabled under the SSA, a claimant must be unable “to engage in any
10 substantial gainful activity by reason of any medically determinable physical or mental
11 impairment which can be expected to result in death or which has lasted for a continuous
12 period of not less than 12 months” and the physical or mental impairments must be of such
13 severity that the claimant “is not only unable to do his previous work but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy.” 42 U.S.C. § 423(d).

16 A five-step sequential evaluation process is used for determining whether a person
17 is disabled. 20 C.F.R. § 404.1520. The claimant has the burden of proof in the first four
18 steps, but the burden shifts to the Commissioner at step five. Tackett v. Apfel, 180 F.3d
19 1094, 1098 (9th Cir. 1999). “If a claimant is found to be ‘disabled’ or ‘not disabled’ at any
20 step in the sequent, there is no need to consider subsequent steps.” Id.

21 The ALJ determined that the Plaintiff’s claim met the requirements of the first three
22 steps but failed at step four. Before considering step four, the ALJ must determine the
23 claimant’s residual functional capacity (“RFC”). 20 C.F.R. § 404.1520(e). A claimant’s
24 RFC is her ability to perform physical and mental work activities despite limitations from
25 her impairments. In step four, the ALJ evaluates whether the claimant has sufficient RFC
26 to perform her past relevant work. Id. § 404.1520(a)(4)(iv),(f). If so, the ALJ will find the
27 claimant not disabled. Id.

1 **B. Standard of Review**

2 Claimants can seek judicial review of the Commissioner’s final decision. 42 U.S.C.
3 § 405(g). On review, the district court must affirm the Commissioner’s decision if it was
4 supported by substantial evidence and proper legal standards. Ukolov v. Barnhart, 420
5 F.3d 1002, 1004 (9th Cir. 2005). Substantial evidence means “more than a mere scintilla
6 but less than a preponderance.” Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995).
7 The Court considers the record as a whole, weighing both the evidence that supports and
8 undermines the Commissioner’s conclusions. Id. “When the evidence can rationally be
9 interpreted in more than one way, the court must uphold the Commissioner’s decision.”
10 Mayes v. Massanar, 276 F.3d 453, 459 (9th Cir. 2001).

11 **II. Analysis**

12 There is no dispute as to the ALJ’s determinations on the first three steps. Plaintiff
13 contests the ALJ’s decision on her RFC and ability to perform her past work. In particular,
14 Plaintiff argues that the ALJ erred in his credibility determination, his evaluation of her
15 past work, and his conclusion that Plaintiff’s RFC allowed her to perform her past work.

16 **A. The ALJ’s Credibility Assessment**

17 The Court begins with a brief review of Plaintiff’s testimony concerning her
18 impairments, symptoms, and activities. Plaintiff testified that she experiences neuropathy
19 and numbness and pain in her right arm, hand, fingertips, and feet, which impair her ability
20 to hold objects and manipulate objects, write, walk on uneven pavement, and feel
21 sensations of hot or cold. (AR 57-64.) Plaintiff stated that she could only walk up to 50
22 feet, or for approximately 20 minutes, before she experiences excruciating pain in her
23 lumbar spine and muscles, pelvis, hips, and legs. (Id. at 57-58, 65.) Plaintiff testified that
24 she can only stand for 15 minutes and can only sit for 30 to 45 minutes because of edema
25 in her legs. (Id. at 58-59, 64.) Plaintiff testified that she could stoop for 1-2 minutes and
26 suggested that she had difficulty moving out of the squatting position due to “knee issues.”
27 (Id. at 60.) Plaintiff stated that her asthma and COPD can create an asthma attack when
28 she talks. (Id. at 58.) Plaintiff testified that she could carry one gallon of milk in her

1 dominant right hand for a “foot [of] distance[.]” (Id. at 59.) Plaintiff stated that she had to
2 lay with her feet elevated in her car “a lot of times” during the day. (Id. at 60.)

3 Regarding her activities, Plaintiff testified that she spends approximately six hours
4 per day on her studies for her online college courses. (Id. at 61.) She stated that she can
5 perform schoolwork in 45-to-50-minute periods before she must adjust her position. (Id.)
6 With respect to treatment, Plaintiff testified that she wears compression socks on a daily or
7 every-other-day basis for her edema. (Id. at 65.) Plaintiff has also noted that she was
8 prescribed a “compression pump” that she has been instructed to use an hour per day for
9 her edema, but she did not comment on whether she uses the compression pump. (Id.)
10 Plaintiff was prescribed medication for her back pain, but she reported that the medication
11 was insufficient to manage her symptoms. (Id. at 65-66.)

12 In order “[t]o determine whether a claimant's testimony regarding subjective pain or
13 symptoms is credible, an ALJ must engage in a two-step analysis.” Lingenfelter v. Astrue,
14 504 F.3d 1028, 1035-36 (9th Cir. 2007). “First, the ALJ must determine 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.” Id. at 1036
17 (internal quotation omitted). The ALJ determined that Plaintiff met the requirements of
18 this step. (AR 43.) Plaintiff does not challenge this aspect of the ALJ’s decision.

19 In the second step of the credibility analysis, an ALJ may only reject the claimant’s
20 testimony “by offering specific, clear and convincing reasons for doing so.” Lingenfelter,
21 504 F.3d at 1036 (internal quotation omitted). “General findings are insufficient; rather,
22 the ALJ must identify what testimony is not credible and what evidence undermines the
23 claimant's complaints.” Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995) (citations
24 omitted). An ALJ may consider a variety of factors in the credibility analysis including: a
25 claimant’s reputation for truthfulness; inconsistencies in a claimant’s testimony or between
26 a claimant’s testimony and a claimant’s conduct; a claimant’s daily activities; a claimant’s
27 work record; testimony from physicians and third parties concerning the nature, severity,
28 effect of the symptoms of which the claimant complains; and an unexplained or

1 inadequately explained failure to seek treatment or to follow a prescribed course of
2 treatment. Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997) (citations
3 omitted); Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008).

4 The ALJ concluded that although Plaintiff’s “impairments can support the
5 claimant’s subjective complaints of pain and cause her to have some functional limitation,
6 in which limiting the claimant to the light exertional level is reasonable,” Plaintiff’s
7 “functional limitations are not any more severe as she alleged.” (AR 44.) Plaintiff
8 challenges the ALJ’s conclusion regarding her credibility on several grounds.

9 First, Plaintiff asserts that the ALJ errantly found her testimony on the severity of
10 her impairments to be contradicted by her testimony regarding her educational activities.
11 (Doc. No. 17 at 11.) Plaintiff faults the ALJ for failing to consider that her online courses
12 allow her to rest at will, take breaks, and elevate her feet while studying, which are
13 alleviative measures that she claims are not available in the workplace. (Id.)

14 The ALJ properly considered Plaintiff’s testimony regarding her educational
15 activities in his consideration of her credibility. Plaintiff’s claim that she studied for 45-
16 minute increments for 6 hours a day contradicted her testimony that she could not sit for
17 long periods of time. (AR 44-45.) Contrary to Plaintiff’s suggestion, the ALJ did not err
18 by omitting Plaintiff’s need to elevate her feet while she sits as Plaintiff did not testify to
19 that limitation. (Id. at 60-62.) The ALJ specifically found Plaintiff’s testimony on her
20 coursework to contradict her claims regarding her capabilities.² (Id. at 44-46.)

21 Second, Plaintiff argues that the ALJ improperly discredited her testimony because
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24 ² Plaintiff contends that the ALJ did not satisfy the grounds for her daily activities to be
25 used for an adverse credibility determination. (Doc. No. 17 at 11-12; Doc. No. 23 at 5-6.)
26 In particular, Plaintiff focuses on the lack of an explanation concerning how her
27 educational activities transfer to the workplace. See Carmickle v. Comm’r, Social Sec.
28 Admin., 533 F.3d 1155, 1161 (9th Cir. 2008). But Plaintiff mistakes the ALJ’s reasoning.
The ALJ does not use Plaintiff’s testimony regarding her educational activities as evidence
that she can perform in the workplace, but rather, as evidence that her testimony on her
limitations is contradictory and not credible.

1 she declined physical therapy. (Doc. No. 17 at 12-13; Doc. No. 23 at 4.) An ALJ is
2 permitted to consider “unexplained or inadequately explained failure to seek treatment or
3 to follow a prescribed course of treatment” as a factor in the ALJ’s credibility analysis.
4 Tommasetti, 533 F.3d at 1039. The ALJ concluded that Plaintiff’s “fail[ure] to follow
5 treatment recommendations . . . undermines the claimant’s subjective complaints and
6 alleged disability.” (AR 56.) The ALJ based his finding on a September 19, 2019
7 healthcare provider note in which a nurse recorded the following:

8 “Called patient to review results of lumbar spine MRI, no evidence of
9 malignancy, shows degenerative disc disease. Encouraged [Primary Care
10 Physician] follow up. Offered referral to [Physical Therapist] which she
11 declined at this time. Per patient request, results faxed to her [Primary Care
Physician] Dr. Michael McMurray.”

12 (Id. at 697.) Plaintiff faults the ALJ for not inquiring into the circumstances surrounding
13 Plaintiff’s decision to decline treatment. (Doc. No. 23 at 4.) But “[a]n ALJ’s duty to
14 develop the record further is triggered only when there is ambiguous evidence or when the
15 record is inadequate to allow for proper evaluation of the evidence.” Mayes, 276 F.3d at
16 459-60. Plaintiff contends that she declined physical therapy because she was undergoing
17 cancer treatments and “homeless and wanted a second opinion[.]” (Doc. No. 23 at 4.) But
18 Plaintiff does not cite to a place in the record in which Plaintiff brought these reasons to
19 the attention of the ALJ. The ALJ did not err by considering Plaintiff’s inadequately
20 explained failure to follow a prescribed course of treatment as a factor in his credibility
21 analysis.³

22 Third, Plaintiff contends that the ALJ failed to consider all the evidence in the record
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24 ³ Plaintiff argues that the ALJ failed to credit her pursuit of “therapy with stockings and
25 pressure pumps and leg elevation to assist in the management” deep vein thrombosis
26 (“DVT”). (Doc. No. 23 at 4.) The ALJ found Plaintiff to be noncompliant with the
27 treatment plan for her back pain rather than her DVT. The Plaintiff does not point to any
28 authority that suggests an ALJ should consider evidence of a claimant following a
treatment option for one ailment to contradict or offset a claimant’s failure to follow a
treatment option for a different ailment.

1 and to seek additional evidence. (Doc. No. 17 at 13.) Plaintiff states that the ALJ made
2 no attempt to consider Plaintiff’s testimony together with the medical evidence in the
3 record. (Doc. No. 17 at 13.) Contrary to Plaintiff’s claim, the ALJ considered Plaintiff’s
4 medical record in conjunction with her testimony. The ALJ recognized that claimant was
5 diagnosed with chronic embolism; cellulitis in her right leg; and chronic non-occlusive
6 DVT in her left popliteal vein. (AR 44.) The ALJ noted that there was no objective
7 evidence of DVT in Plaintiff’s right lower extremity. (Id.) The ALJ also explained that
8 Plaintiff “underwent routine follow-up evaluation of her lower extremity discomfort,
9 swelling, and pain [and] [a] progress note indicates her symptoms initially improved with
10 the persistent lower extremity swelling and discomfort with ambulation” (Id.)

11 The Court concludes that the ALJ considered the medical evidence in the record in
12 reaching his assessment of Plaintiff’s residual functional capacity. In fact, the ALJ
13 considered the medical records to support the Plaintiff’s “subjective complaints of pain and
14 cause her to have some functional limitations[.]” (Id.) The ALJ did not, however, consider
15 the medical records to support Plaintiff’s claims regarding the severity of her functional
16 limitations. Plaintiff does not direct the Court to a portion of the medical record that the
17 ALJ failed to weigh in his consideration of Plaintiff’s credibility.⁴

18 Finally, Plaintiff argues that the ALJ improperly relied on the state agency’s opinion
19 because it was outdated. (Doc. No. 17 at 13; Doc. No. 23 at 6.) The state agency’s last
20 review of the evidence was on May 14, 2019 and the state agency’s opinion was issued on
21 September 10, 2019. (Doc. No. 17 at 13.) But, “an updated opinion is not required simply
22 because additional medical evidence is received after the State agency physicians had
23 already reviewed Plaintiff’s records.” Smith v. Saul, 2020 WL 6305830, at *8 (E.D. Cal.
24 Oct. 28, 2020). Plaintiff does not point to subsequent objective evidence that would have
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28 ⁴ Plaintiff also faults the ALJ for not developing the record further, but the medical
evidence was neither ambiguous nor inadequate. Mayes, 276 F.3d at 459-60.

1 a material impact of the disability decision.⁵ Id.

2 The ALJ properly reached his credibility determination regarding Plaintiff's
3 testimony on the basis of substantial evidence and multiple clear-and-convincing
4 rationales. Lingenfelter, 504 F.3d at 1036. The ALJ did not make "general findings,"
5 Lester, 81 F.3d at 834, but rather specifically showed why he came to his determination by
6 making findings based on the medical record and Plaintiff's testimony. (AR 42-45.)

7 **B. Plaintiff's Ability to Return to Past Relevant Work**

8 The ALJ concluded that performance of Plaintiff's past relevant work as a fruit
9 arranger and a caregiver were within her RFC. (AR 46.) Plaintiff has the burden of
10 showing that she can no longer perform her past relevant work. Lewis v. Barnhart, 281
11 F.3d 1081, 1083 (9th Cir. 2002). A claimant must be able to perform her past relevant
12 work either as actually performed or as generally performed in the national economy. Id.
13 An ALJ "may draw on two sources of information to define the claimant's past relevant
14 work as actually performed: (1) the claimant's own testimony, and (2) a properly
15 completed vocational report." Id. The ALJ based his conclusion on Plaintiff's vocational
16 background and the Vocational Expert's testimony. (AR 46)

17 First, the Court addresses the fruit arranger position.⁶ The ALJ concluded that
18 Plaintiff could return to her past work as a fruit arranger. (Id.) In her brief, Plaintiff argued
19 that her earnings in the fruit arranger position did not meet the requirements of substantial
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22 ⁵ Plaintiff argues that several important medical records post-date the state agency's
23 opinion: (i) an MRI performed on September 18, 2019; (ii) a duplex scan performed on
24 January 9, 2020; and (iii) the prescription of a pump and a cane. The ALJ considered these
25 records. The ALJ considered the MRI and Plaintiff's decision not to pursue physical
26 therapy as part of his credibility determination. (AR 45.) The ALJ considered the results
27 of the duplex examination with other evidence concerning Plaintiff's ailments. (Id. at 44.)
28 Finally, the ALJ considered Plaintiff's use of a cane and her prescription for a compression
pump. (Id. at 42.)

⁶ The ALJ equated Plaintiff's past work as a fruit arranger with the position of "Floral Arranger" as defined in the U.S. Department of Labor's *Dictionary of Occupational Titles*.

1 gainful activity. (Doc. No. 17 at 14.) The Commissioner conceded this point during the
2 Court's hearing. (Doc. No. 24.)

3 Next, the Court proceeds to consideration of the caregiver occupation. Plaintiff
4 contends that the tasks of a caregiver, as customarily performed and as performed by her
5 in the past, are not within her RFC. (Doc. No. 17 at 14-17; Doc. No. 23 at 7-8.) The ALJ
6 agreed that Plaintiff could not perform the position of caregiver as customarily performed,
7 but he concluded that she could perform the position of caregiver as she had performed it
8 in the past. (AR 46, 67.) At the hearing before the ALJ, the Vocational Expert identified
9 Plaintiff's past work as including caregiver performed at a "light" level. (AR 66.)

10 Plaintiff asserts that the ALJ erred when he concluded that she could perform the
11 position of caregiver as she had previously performed it. Plaintiff argues that the ALJ
12 incorrectly assessed the difficulty of her caregiver work and failed to resolve a conflict in
13 Plaintiff's vocational records. (Doc. No. 17 at 16.) Plaintiff's vocational history report
14 states that, as a caregiver, Plaintiff carried a laundry basket 20-25 feet daily, dishes 3-5
15 feet twice daily, a water basin 5-10 feet daily, and grocery bags once per week. (AR 263.)
16 Plaintiff also stated her tasks included the assistance of elderly or infirm people as they
17 perform daily activities such as dressing, bathing, walking, cooking, and cleaning, and that
18 she drove elderly or infirm people to their medical appointments. (Id.) Plaintiff asserts
19 that these tasks do not fit within the "light exertional level" identified by the ALJ. (Id. at
20 45.) Although Plaintiff's work history notes that the heaviest weight she lifted as a
21 caregiver was 10 pounds, Plaintiff suggests that those weight estimates are an error. (Doc.
22 No. 23 at 7.)

23 Plaintiff contends that the ALJ should have resolved the discrepancy between her
24 reported tasks, the tasks customary to the caregiver position, and the uncharacteristically
25 light weight estimates on her vocational report form. (Id.) The Court agrees. The record
26 before the ALJ concerning Plaintiff's past work as a caregiver was ambiguous and suitable
27 for further development by the ALJ. Mayes, 276 F.3d at 459-60. The tasks listed by the
28 Plaintiff in her work history form indicate that she performed past work above the "light"

1 exertional level. (AR 263.) Further, the Court notes that the caregiver position is typically
2 performed at the “medium” exertional level. (Id. at 46). The ALJ never inquired with
3 Plaintiff about her past work as a caregiver. (Id. at 54-66.) Nor did the ALJ inquire with
4 the Vocational Expert about the Plaintiff’s past work as a caregiver. (Id. at 66-70.)
5 Plaintiff’s health impairments also appear to be in conflict with her past work as a
6 caregiver. The ALJ recognized that Plaintiff experiences functional impediments
7 including: chronic non-occlusive DVT and embolism in her left popliteal vein; severe deep
8 and superficial venous reflux, bilateral femoral and greater saphenous veins; an
9 incompetent perforator in her bilateral lower extremities; and cellulitis her right leg. (Id.
10 at 44.) Plaintiff is nearly 60 years old and weighed 292 pounds at the time of the ALJ
11 hearing, which the ALJ found to be a severe impairment. (Id. at 45, 299, 812.) She
12 experiences health effects from COPD, asthma, a strain in her right rotator cuff, and her
13 history of breast cancer. (Id. at 41, 44.) Taken together, Plaintiff exhibits many
14 impairments that may incompatible with performing the role of a caregiver. The Court
15 concludes that the ALJ should further develop the record as it pertains to Plaintiff’s past
16 work as a caregiver. Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983) (“In Social
17 Security cases[,] the ALJ has a special duty to fully and fairly develop the record and to
18 assure that the claimant’s interests are considered.”) (citation omitted).

19 **C. Remand is Appropriate**

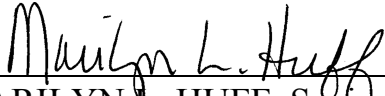
20 The Court concludes that remand is appropriate here as additional proceedings could
21 remedy the defects in the Commissioner’s decision. Lewin v. Schweiker, 654 F.2d 631,
22 635 (9th Cir. 1981).

1 **CONCLUSION**

2 Based on the foregoing, the Court vacates the ALJ's decision and remands for further
3 proceedings consistent with this order.

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5 **IT IS SO ORDERED.**

6 DATED: July 26, 2022

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9 MARILYN L. HUFF, Senior District Judge
10 UNITED STATES DISTRICT COURT
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