

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

Brenda Dee Baker Riojas v. Commissioner of Social Security

Baker Riojas · No. 1:24-cv-0688-HBK · Decided August 21, 2025

SUMMARY

The United States District Court for the Eastern District of California reviews a partially favorable Social Security disability determination concerning Brenda Dee Baker Riojas. The court concludes that the administrative law judge did not provide specific and legitimate, substantially supported reasons for discounting certain medical opinion evidence, and remands the case to the Commissioner for further administrative proceedings.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Helena M. Barch-Kuchta                                                                                                                                                                                                                                                                                                                                                                                       |
| JURISDICTION          | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | August 21, 2025                                                                                                                                                                                                                                                                                                                                                                                              |
| DOCKET                | 1:24-cv-0688-HBK                                                                                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Plaintiff sought judicial review under 42 U.S.C. §§ 405(g) and 1383(c) (3) of the Commissioner's partially favorable decision on her applications for supplemental security income and disability insurance benefits. The parties filed cross-motions for summary judgment without oral argument.                                                                                                            |
| STANDARD OF REVIEW    | The court reviews the Commissioner's decision under 42 U.S.C. § 405(g) and may disturb it only if it is unsupported by substantial evidence or based on legal error. Substantial evidence is relevant evidence a reasonable mind might accept as adequate, and the record must be considered as a whole. The court may not substitute its judgment for the Commissioner's and must disregard harmless error. |
| PRECEDENTIAL VALUE    | Unpublished, nonprecedential district-court order                                                                                                                                                                                                                                                                                                                                                            |
| PARTIES               | Brenda Dee Baker Riojas v. Commissioner of Social Security                                                                                                                                                                                                                                                                                                                                                   |

TOPICS

judicial review of agency action

agency adjudication

administrative law

disability definition

## PRACTICE AREAS

Social Security disability

administrative law

judicial review of agency action

medical opinion evidence

summary judgment

## QUESTIONS PRESENTED

1. Whether the ALJ properly evaluated the medical opinions of Robert Graham, Craig R. MacClean, and Peter Mendelsohn.
2. Whether the ALJ properly evaluated the records of Diego Allende and Abel Quesada.
3. Whether the case should be remanded for payment of benefits or for further administrative proceedings.

## HOLDINGS

1. The ALJ failed to provide specific and legitimate reasons supported by substantial evidence for assigning only some weight to Dr. Graham's opinions.
2. The ALJ failed to properly consider Dr. MacClean's October 2009 and August 2010 opinions concerning Plaintiff's lifting, neck, and left-upper-extremity limitations.
3. The ALJ's consideration of Dr. Mendelsohn's opinion required reconsideration on remand because the ALJ failed to adequately explain why the examination findings did not support the stated postural limitations.
4. The ALJ did not err by failing to provide specific reasons for rejecting the records of Dr. Allende and Dr. Quesada because those records did not themselves assess specific functional limitations.
5. The proper remedy was reversal and remand for further administrative proceedings rather than an immediate award of benefits.

## KEY QUOTATIONS

*“the Court “review[s] the ALJ's decision based on the reasoning and factual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have been thinking.””* (Discussion § VII.A.1)

*“where “no useful purpose would be served by further administrative proceedings, or where the record has been thoroughly developed,””* (Discussion § VII.B)

*“only “rare circumstances that result in a direct award of benefits””* (Discussion § VII.B)

## FACTUAL BACKGROUND

Plaintiff alleged disability beginning March 15, 2008, based on physical and mental impairments including spinal degenerative disease, pain, upper-extremity limitations, migraines, anxiety, and depression. She had no past relevant work and testified that her ability to use her arms and legs worsened over time, particularly after

2017 neck surgery. The ALJ found her disabled beginning December 8, 2014, but relied on a light-work residual functional capacity before that date and discounted several medical opinions supporting greater limitations.

## PROCEDURAL HISTORY

Plaintiff filed applications in 2009, received multiple unfavorable administrative decisions, and obtained several Appeals Council remands and one prior district-court remand. The most recent ALJ decision, issued March 25, 2024, found Plaintiff disabled beginning December 8, 2014, but not before that date. The court granted Plaintiff's motion in part, denied the Commissioner's cross-motion, reversed the Commissioner's decision, and remanded for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The ALJ must reevaluate the medical opinions of Robert Graham, Craig R. MacClean, and Peter Mendelsohn, consider all relevant medical evidence and progress reports, conduct a new sequential analysis, reassess Plaintiff's RFC, and, if necessary, obtain additional vocational-expert testimony incorporating all limitations credited by the ALJ.

## CASES CITED

- Hill v. Astrue, 698 F.3d 1153, 1158-59 (9th Cir. 2012)
- Tommasetti v. Astrue, 533 F.3d 1035, 1038, 1041 (9th Cir. 2008)
- Shinseki v. Sanders, 556 U.S. 396, 409-10 (2009)
- Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999)
- Beltran v. Astrue, 700 F.3d 386, 389 (9th Cir. 2012)
- Holohan v. Massanari, 246 F.3d 1195, 1201-02, 1207 (9th Cir. 2001)
- Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005)
- Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995)
- Bray v. Commissioner of Social Security Administration, 554 F.3d 1219, 1226-28 (9th Cir. 2009)
- Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1195 (9th Cir. 2004)
- Orn v. Astrue, 495 F.3d 625, 631, 638 (9th Cir. 2007)
- Ghanim v. Colvin, 763 F.3d 1154, 1164 (9th Cir. 2014)
- Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998)
- Brown-Hunter v. Colvin, 806 F.3d 487, 495 (9th Cir. 2015)
- Morgan v. Commissioner of Social Security Administration, 169 F.3d 595, 603 (9th Cir. 1999)
- Chaudhry v. Astrue, 688 F.3d 661, 672 (9th Cir. 2012)
- W.M. Lyles Co. v. Workmen's Compensation Appeals Board, 3 Cal. App. 3d 132, 136 (1969)
- Holmes v. Astrue, 2011 WL 2837698, at \*4 (C.D. Cal. July 15, 2011)

- Booth v. Barnhart, 181 F. Supp. 2d 1099, 1105 (C.D. Cal. 2022)
- Turner v. Commissioner of Social Security Administration, 613 F.3d 1217, 1223 (9th Cir. 2010)
- Carmickle v. Commissioner of Social Security Administration, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008)
- McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989)
- Varney v. Secretary of Health & Human Services, 859 F.2d 1396, 1399, 1401 (9th Cir. 1988)
- Terry v. Sullivan, 903 F.2d 1273, 1280 (9th Cir. 1990)
- Garrison v. Colvin, 759 F.3d 995, 1020-21 (9th Cir. 2014)
- Revels v. Berryhill, 874 F.3d 648, 668 (9th Cir. 2017)
- Benecke v. Barnhart, 379 F.3d 587, 595-96 (9th Cir. 2004)
- Harman v. Apfel, 211 F.3d 1172, 1179-80 (9th Cir. 2000)
- Marshall M. v. Commissioner of Social Security Administration, 2024 WL 2317386, at \*9 (D. Or. May 22, 2024)
- Leon v. Berryhill, 880 F.3d 1041, 1047 (9th Cir. 2018)

## OPINION

(SS) Baker Riojas v. Commissioner of Social Security

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 BRENDA DEE BAKER RIOJAS, Case No. 1:24-cv-0688-HBK 12 Plaintiff, ORDER  
REMANDING CASE TO

COMMISSIONER OF SOCIAL SECURITY<sup>1</sup>

13 v. (Doc. Nos. 18, 23)

14 COMMISSIONER OF SOCIAL

SECURITY,

15 Defendant. 16

17 18 Brenda Dee Baker Riojas (“Plaintiff”) seeks judicial review of a final decision of the 19  
Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for  
20 supplemental security income and disability insurance benefits under the Social Security Act.  
21 (Doc. No. 1). The matter is currently before the undersigned on the parties’ briefs, which were  
22 submitted without oral argument. (Doc. Nos. 18, 23). For the reasons set forth more fully  
below, 23 the Court remands the matter to the Commissioner of Social Security for further  
administrative 24 proceedings.

## 25 I. JURISDICTION

26 Plaintiff protectively filed for supplemental security income and disability insurance 27 1 Both  
parties have consented to the jurisdiction of a magistrate judge, in accordance with 28 U.S.C. 28  
§636(c)(1). (Doc. No. 6). 1 benefits on September 24, 2009, alleging a disability onset date of

March 15, 2008. (AR 140-54). 2 Benefits were denied initially (AR 73-77) and upon reconsideration (AR 81-87). Plaintiff 3 appeared for a hearing before an administrative law judge (“ALJ”) on September 12, 2011. (AR 4 39-66). Plaintiff testified at the hearing and was represented by counsel. (Id.). The ALJ denied 5 benefits (AR 16-38) and the Appeals Council denied review (AR 1-5). 6 On July 21, 2014, the United States District Court for the Eastern District of California 7 remanded to the Commissioner for further administrative proceedings. (AR 983-99). On

8 December 19, 2014, the Appeals Council vacated the ALJ’s finding and remanded for further 9 administrative proceedings including the opportunity for a new hearing. (AR 979-82). On July 10 15, 2015, Plaintiff appeared for a second hearing before an ALJ. (AR 914-49). Plaintiff was 11 represented by counsel and testified at the hearing. (Id.). On October 21, 2015, the ALJ issued 12 an unfavorable decision. (AR 1139-70). On December 23, 2016, the Appeals Council remanded 13 for further administrative proceedings including the opportunity for a new hearing. (AR 1132- 14 38). On March 30, 2017, Plaintiff appeared for a third hearing before an ALJ. (AR 950-78). 15 Plaintiff was represented by counsel and testified at the hearing. (Id.). On January 24, 2018, the 16 ALJ issued an unfavorable decision. (AR 1171-1202). On April 12, 2019, the Appeals Council 17 remanded again for further administrative proceedings including the opportunity for a new 18 hearing. (AR 1203-08). On October 31, 2019, Plaintiff testified at a fourth hearing before an 19 ALJ. (AR 883-913). On February 26, 2020, the ALJ issued a partially favorable decision finding 20 Plaintiff became disabled after April 24, 2015. (AR 1216-57). On September 19, 2022, the 21 Appeals Council remanded again for further administrative proceedings including the opportunity 22 for a new hearing. (AR 1209-15). On December 5, 2023, Plaintiff appeared for a fifth hearing 23 before an ALJ. (AR 852-82). She was represented by counsel and testified at the hearing. (Id.). 24 On March 25, 2024, the ALJ issued a partially favorable decision finding Plaintiff became 25 disabled after December 8, 2014. (AR 803-51). The matter is before the Court under 42 U.S.C. § 26 405(g) and 42 U.S.C. § 1383(c)(3).

## 27 II. BACKGROUND

28 The facts of the case are set forth in the administrative hearing and transcripts, the ALJ’s 1 decision, and the briefs of Plaintiff and Commissioner. Only the most pertinent facts are 2 summarized here. 3 At the time of the most recent December 2023 hearing, Plaintiff was 48 years old. (See 4 AR 212). She completed twelfth grade. (AR 860). She lives alone. (AR 860). She has no past 5 relevant work. (AR 860, 871). Plaintiff testified the “major things” making it difficult for her to 6 work during the relevant period were standing, lifting, migraines, anxiety, and inability to “feel” 7 her arm and legs. (AR 861). She reported that over the course of the last 15 years, her ability to 8 use her arms and legs has changed dramatically, and since her neck surgery in 2017 she cannot 9 feel her hand or lift her arms “half the time.” (AR 861). After the 2017 surgery, her pain and 10 symptoms worsened, and even before surgery she was constantly dizzy and had extreme pain. 11 (AR 862-63). Plaintiff testified that around 2010 she was dizzy, dropping things, and had

chronic 12 headaches and blurred vision. (AR 864). From 2010 to 2017 things went “downhill” and things 13 “especially” changed for the worse after the 2017 surgery. (AR 864). She reported her mental 14 functioning has declined during the past 10 to 15 years. (AR 864-65). Plaintiff testified she has 15 tachycardia which has been getting worse over time; and injections in her back, neck, and knees 16 made her symptoms worse. (AR 867-68). She reported she has not been able to move her neck 17 since her date of injury, and after surgery her neck has been “stuck.” (AR 868).

### 18 III. STANDARD OF REVIEW

19 A district court’s review of a final decision of the Commissioner of Social Security is 20 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the 21 Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or 22 is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial 23 evidence” means “relevant evidence that a reasonable mind might accept as adequate to support a 24 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence 25 equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and 26 citation omitted). In determining whether the standard has been satisfied, a reviewing court must 27 consider the entire record as a whole rather than searching for supporting evidence in isolation. 28 *Id.* 1 In reviewing a denial of benefits, a district court may not substitute its judgment for that of 2 the Commissioner. “The court will uphold the ALJ’s conclusion when the evidence is susceptible 3 to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 4 2008). Further, a district court will not reverse an ALJ’s decision on account of an error that is 5 harmless. *Id.* An error is harmless where it is “inconsequential to the [ALJ’s] ultimate 6 nondisability determination.” *Id.* (quotation and citation omitted). The party appealing the ALJ’s 7 decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 8 U.S. 396, 409-10 (2009).

### 9 IV. SEQUENTIAL EVALUATION PROCESS

10 A claimant must satisfy two conditions to be considered “disabled” within the meaning of 11 the Social Security Act. First, the claimant must be “unable to engage in any substantial gainful 12 activity by reason of any medically determinable physical or mental impairment which can be 13 expected to result in death or which has lasted or can be expected to last for a continuous period 14 of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the 15 claimant’s impairment must be “of such severity that he is not only unable to do his previous 16 work[,] but cannot, considering his age, education, and work experience, engage in any other kind 17 of substantial gainful work which exists in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 18 1382c(a)(3)(B). 19 The Commissioner has established a five-step sequential analysis to determine whether a 20 claimant satisfies the above criteria. See 20 C.F.R. §§ 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). 21 At step one, the Commissioner considers the claimant’s work activity. 20 C.F.R. §§ 22 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is engaged in “substantial

gainful activity,” 23 the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(b), 24 416.920(b). 25 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step 26 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20 27 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant suffers from “any impairment or 28 combination of impairments which significantly limits [his or her] physical or mental ability to do 1 basic work activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c), 416.920(c). 2 If the claimant’s impairment does not satisfy this severity threshold, however, the Commissioner 3 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). 4 At step three, the Commissioner compares the claimant’s impairment to severe 5 impairments recognized by the Commissioner to be so severe as to preclude a person from 6 engaging in substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If 7 the impairment is as severe or more severe than one of the enumerated impairments, the 8 Commissioner must find the claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 9 416.920(d). 10 If the severity of the claimant’s impairment does not meet or exceed the severity of the 11 enumerated impairments, the Commissioner must pause to assess the claimant’s “residual 12 functional capacity.” Residual functional capacity (RFC), defined generally as the claimant’s 13 ability to perform physical and mental work activities on a sustained basis despite his or her 14 limitations, 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth 15 steps of the analysis. 16 At step four, the Commissioner considers whether, in view of the claimant’s RFC, the 17 claimant is capable of performing work that he or she has performed in the past (past relevant 18 work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the claimant is capable of 19 performing past relevant work, the Commissioner must find that the claimant is not disabled. 20 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the 21 analysis proceeds to step five. 22 At step five, the Commissioner considers whether, in view of the claimant’s RFC, the 23 claimant is capable of performing other work in the national economy. 20 C.F.R. §§ 24 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination, the Commissioner must also 25 consider vocational factors such as the claimant’s age, education, and past work experience. 20 26 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). If the claimant is capable of adjusting to other 27 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§ 28 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis 1 concludes with a finding that the claimant is disabled and is therefore entitled to benefits. 20 2 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). 3 The claimant bears the burden of proof at steps one through four. *Tackett v. Apfel*, 180 4 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the 5 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such 6 work “exists in significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 7 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

## 8 V. ALJ’S FINDINGS

9 At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity 10 since alleged onset date. (AR 811). At step two, the ALJ found that since the alleged onset date 11 of disability, March 15, 2008, Plaintiff has the following severe impairments: degenerative disc 12 disease of the cervical and lumbar spine; obesity; carpal tunnel syndrome; asthma; depression; 13 and anxiety. (AR 811). At step three, the ALJ found that since March 15, 2008, Plaintiff does 14 not have an impairment or combination of impairments that meets or medically equals the 15 severity of a listed impairment. (AR 812). The ALJ then found that prior to December 8, 2014, 16 the date Plaintiff became disabled, Plaintiff had the RFC to 17 perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) except the claimant was occasionally able to climb ramps and stairs, 18 and never able to climb ladders, ropes and/or scaffolds. The claimant was occasionally able to reach overhead, bilaterally. The claimant 19 should not work in environments subjecting her to concentrated exposure to respiratory irritants such as gases, dust, smoke and/or 20 fumes, or which would expose her to unprotected heights or machinery with dangerous, moving mechanical parts. The claimant 21 was able to perform jobs of a non-complex nature requiring the performance of no more than simple, routine tasks. 22 23 (AR 814). Next, the ALJ found that beginning on December 8, 2014, Plaintiff has the RFC to 24 perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) except the claimant is occasionally able to climb ramps and stairs, 25 and never able to climb ladders, ropes and/or scaffolds. The claimant is occasionally able to balance, crawl, crouch, kneel and stoop, and 26 is occasionally able to reach overhead, bilaterally. The claimant should not work in environments subjecting her to concentrated 27 exposure to respiratory irritants such as gases, dust, smoke and/or fumes, or which would expose her to unprotected heights or 28 machinery with dangerous, moving mechanical parts. The claimant 1 is able to perform jobs of a non-complex nature requiring the performance of no more than simple, routine tasks. The claimant 2 would be able to occasionally reach in all directions and would be off task from work-related duties and assignments for 15% of an 8 3 hour workday. 4 (AR 828). At step four, the ALJ found that Plaintiff has no past relevant work. (AR 831). At 5 step five, the ALJ found that prior to December 8, 2014, considering Plaintiff's age, education, 6 work experience, and RFC, there were jobs that exist in significant numbers in the national 7 economy that Plaintiff could have performed, including marker, housekeeping, cleaner, and 8 automatic car wash attendant. (AR 832). However, beginning on December 8, 2014, considering 9 Plaintiff's age, education, work experience, and RFC, there are no jobs that exist in significant 10 numbers in the national economy that Plaintiff can perform. (AR 833). On that basis, the ALJ 11 concluded that Plaintiff was not disabled prior to December 8, 2014, but became disabled on that 12 date and has continued to be disabled through the date of the decision. (AR 833). Further, the 13 ALJ concluded Plaintiff was not under a disability within the meaning of the Social Security Act, 14 at any time through December 31, 2012, the date last insured. (AR 833).

## 15 VI. ISSUES

16 Plaintiff seeks judicial review of the Commissioner's final decision denying her 17

supplemental security income benefits under Title XVI of the Social Security Act and disability 18 insurance benefits under Title II of the Social Security Act. (Doc. No. 1). Plaintiff raises the 19 following issue for this Court's review: whether the ALJ properly considered the medical opinion 20 evidence. (Doc. No. 18 at 10-29).

## 21 VII. DISCUSSION

22 A. Medical Opinions 23 There are three types of physicians: "(1) those who treat the claimant (treating 24 physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) 25 those who neither examine nor treat the claimant [but who review the claimant's file] 26 2 For claims filed on or after March 27, 2017, new regulations changed the framework for evaluation of 27 medical opinion evidence. Revisions to Rules Regarding the Evaluation of Medical Evidence, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20 C.F.R. § 416.920c. As Plaintiff's claims were filed on

28 September 24, 2009, the medical evidence is evaluated under the prior regulations.

1 (nonexamining [or reviewing] physicians)." *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th 2 Cir. 2001) (citations omitted). Generally, a treating physician's opinion carries more weight than 3 an examining physician's opinion, and an examining physician's opinion carries more weight 4 than a reviewing physician's opinion. *Id.* If a treating or examining physician's opinion is 5 uncontradicted, the ALJ may reject it only by offering "clear and convincing reasons that are 6 supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). 7 Conversely, "[i]f a treating or examining doctor's opinion is contradicted by another doctor's 8 opinion, an ALJ may only reject it by providing specific and legitimate reasons that are supported 9 by substantial evidence." *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)). 10 "However, the ALJ need not accept the opinion of any physician, including a treating physician, 11 if that opinion is brief, conclusory and inadequately supported by clinical findings." *Bray v. 12 Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (quotation and citation 13 omitted). 14 Plaintiff argues the ALJ failed to properly consider the medical opinions of Robert 15 Graham, M.D., Craig R. MacClean, M.D., Peter Mendelsohn, M.D., Diego Allende, D.O., and 16 Abel Quesada, M.D. (Doc. No. 18 at 10-28). 17 1. Robert Graham, M.D. 18 On June 16, 2015, Plaintiff's treating physician Dr. Robert Graham provided a physical 19 RFC medical source statement opining that Plaintiff could lift less than 5 pounds occasionally, 10 20 pounds rarely, and never 15 pounds or more; carry less than 5 pounds occasionally, 5 pounds 21 rarely, and never 10 pounds or more; sit less than one hour in an 8-hour workday or about 6 hours 22 with changes in position; stand and walk about one hour in an 8-hour workday; lie down or 23 recline for about 2 hours in an 8-hour workday; take unscheduled breaks every 2 hours for 5-10 24 minutes; use her upper extremities for grasping, turning, twisting, and fine manipulations 10% of 25 an 8-hour workday; reach bilaterally, including overhead, for 5% of an 8-hour workday; and 26 never climb stairs, ladders, scaffolds, ropes and ramps. (AR 2390-92). Dr. Graham also opined 27 that pain would frequently interfere with attention and concentration needed for Plaintiff to 28 perform

simple work tasks; she would be “off task” more than 30% of an 8-hour workday; she 1 would be absent from work due to her impairments 5 days or more per month; she would be 2 unable to complete an 8-hour workday 5 days or more per month due to her impairments; and she 3 would be efficient in performing a job 8 hours per day, 5 days per week, on a sustained basis 50% 4 or less compared to an average worker. (AR 2392-93). 5 On March 20, 2017, Dr. Graham provided an additional physical RFC medical source 6 statement opining that Plaintiff could lift and/or carry 5 pounds or less occasionally, 10-15 7 pounds rarely, and never 20 pounds or more; sit about 5 hours in an 8-hour workday; stand and 8 walk less than one hour in an 8-hour workday; lie down or recline for about 1 hour in an 8-hour 9 workday; take unscheduled breaks every 3 days per week for 1-2 hours at a time; use her hand to 10 grasp, turn, and twist objects 60% of an 8-hour workday; use her right fingers for fine 11 manipulations 50% of an 8-hour workday; and reach, including overhead, with her right arm 10% 12 of an 8-hour workday; use her left hand to grasp, turn, and twist objects 20% of an 8-hour 13 workday; use her left fingers for fine manipulations 20% of an 8-hour workday; never use her left 14 arm to reach, including overhead; and never climb stairs, ladders, scaffolds, ropes, and ramps. 15 (AR 2863-65). Dr. Graham also opined that pain would constantly interfere with attention and 16 concentration needed for Plaintiff to perform simple work tasks; she would be “off task” more 17 than 30% of an 8-hour workday; she would be absent from work due to her impairments 5 days or 18 more per month; she would be unable to complete an 8-hour workday 5 days or more per month 19 due to her impairments; and she would be efficient in performing a job 8 hours per day, 5 days 20 per week, on a sustained basis 50% or less compared to an average worker. (AR 2865-66). 21 Notably, Dr. Graham opined that these limitations had existed since 2009. (AR 2863). 22 The ALJ considered Dr. Graham’s opinions jointly and gave them “some weight” because 23 they are “not supported by the overall record as of the established onset date, as the record 24 suggests the claimant exhibited a strong gait prior to the established onset date and strength and 25 neuro were full. These opinions suggest greater upper extremity impairment at an earlier period 26 of time which is inconsistent with the record and testimony.” (AR 826 (citing AR 2091, 5381)). 27 An ALJ may discount an opinion that is conclusory, brief, and unsupported by the record as a 28 whole, or by objective medical findings. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); see also *Orn*, 495 F.3d at 631 (the consistency of a medical opinion with the 2 record as a whole is a relevant factor in evaluating that medical opinion). Plaintiff notes that the 3 ALJ relies solely on two emergency treatment visits to support this finding, one for dizziness and 4 one for abdominal pain, neither of which were orthopedic in nature; and Plaintiff argues the ALJ 5 failed to consider the “entirety of the record” in making these findings. (Doc. No. 18 at 16-17). 6 Defendant argues the ALJ reasonable discounted Dr. Graham’s opinions as inconsistent with 7 records dated before the established onset date, inconsistent with Plaintiff’s testimony, and 8 inconsistent with each other as they show “an overall improvement in the bilateral upper 9 extremity function from 2015 to 2017.” (Doc. No. 23 at 8-9). 10 As an initial matter, a precise reading of the ALJ’s decision

indicates he did not reject Dr. 11 Graham's opinions because they were inconsistent with each other; rather, the ALJ found the 12 opinions "suggest greater impairment at an earlier period of time which is inconsistent with the 13 record and testimony." (AR 826) (emphasis added); see *Morgan v. Comm'r Soc. Sec. Admin.*, 14 169 F.3d 595, 603 (9th Cir. 1999) (internal inconsistencies within a physician's report constitute 15 relevant evidence when weighing medical opinions). Thus, the Court is not permitted to consider 16 any reasoning as to inconsistencies between Dr. Graham's 2015 and 2017 opinions as this was 17 not offered by the ALJ as a reason to discount Dr. Graham's opinions. *Bray*, 554 F.3d at 1226 18 (the Court "review[s] the ALJ's decision based on the reasoning and factual findings offered by 19 the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have been 20 thinking."). 21 However, an ALJ may not "cherry-pick[ ]" aspects of the medical record and focus only 22 on those aspects that fail to support a finding of disability. *Ghanim v. Colvin*, 763 F.3d 1154, 23 1164 (9th Cir. 2014); see *Holohan*, 246 F.3d at 1207 (faulting the ALJ's selective reliance on 24 some aspects of the treating records while ignoring other aspects suggestive of a more severe 25 impairment). Moreover, when considering the medical opinion evidence, the ALJ must do more 26 than state a conclusion; rather, the ALJ must "set forth his own interpretations and explain why 27 they, rather than the doctors,' are correct." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998); 28 *Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (a court "cannot substitute [the 1 court's] conclusions for the ALJ's, or speculate as to the grounds for the ALJ's conclusions. 2 Although the ALJ's analysis need not be extensive, the ALJ must provide some reasoning in 3 order for [the court] to meaningfully determine whether the ALJ's conclusions were supported by 4 substantial evidence."). "This can be done by setting out a detailed and thorough summary of the 5 facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." 6 *Reddick*, 157 F.3d at 725. 7 Here, the ALJ cites only two records in support of the finding that Dr. Graham's opinions 8 are "not supported by the overall record as of the established onset date," namely: (1) a July 2014 9 visit to the emergency room for abdominal pain and migraine that noted normal neuro and 10 strength on examination; and (2) a February 2014 visit to the emergency department for dizziness 11 that noted a "strong steady gait." (See AR 2091, 5381). Moreover, the ALJ offers no evidence 12 from the record to support the finding that Dr. Graham's opinion reflecting greater upper 13 extremity impairment in 2015 than 2017 is inconsistent with the record and Plaintiff's testimony. 14 Defendant cites to several additional treatment records from the relevant adjudicatory period that 15 would tend to support the ALJ's findings, including findings of strong gait, normal range of 16 motion, normal strength, and normal coordination. (Doc. No. 23 at 8 (citing AR 2471, 2584, 17 2614, 2775)). However, the Court's independent review of Plaintiff's testimony indicates she 18 reported a discernable worsening of her impairment after her neck surgery in September 2017, six 19 months after Dr. Graham's March 2017 opinion (AR 3087-88). (AR 862, 864 ("from the moment 20 of injury it's just kind of decline. Especially ... after surgery drastically changed for me."), 868 21 (reporting she hasn't been able to move her

neck since her injury, but “it doesn’t do anything 22 since surgery.”)). Moreover, as noted by Plaintiff, treatment records from the adjudicatory period 23 include findings of decreased range of motion, MRI results showing degenerative disc disease of 24 the lumbar and cervical spine, tenderness in the thoracic and lumbar spine, decreased strength, 25 tenderness in the upper extremity, decreased grip, positive Tinel’s and Phalen’s, and positive 26 straight leg raising. (Doc. No. 18 at 12-16 (citing AR 2133-35, 2151, 2153, 2161, 2167 (noting 27 difficulty straightening spine due to pain), 2390, 2561, 2816, 2829, 2834, 2845-46, 2853-54, 28 2858, 2862)). Based on the foregoing, the ALJ’s general findings that Dr. Graham’s opined 1 limitations are unsupported by the “overall record,” and the greater upper extremity impairment at 2 an earlier period of time is inconsistent with the record and testimony, are not specific and 3 legitimate reasons, supported by substantial evidence, to give Dr. Graham’s opinions only “some 4 weight.” 5 2. Craig R. MacClean, M.D. 6 In March 2007, Dr. MacClean completed an Agreed Medical Examiner examination in the 7 context of Plaintiff’s workers compensation claim, wherein he opined that Plaintiff was 8 temporarily totally disabled, and he anticipated she would reach maximum medical improvement 9 in 6 to 8 weeks. (AR 2413). The Court finds the ALJ properly discounted Dr. MacClean’s

10 March 2007 opinion as the conclusion that Plaintiff is “disabled” or unable to work is a matter 11 reserved to the Commissioner of Social Security. The regulations are clear that the 12 Commissioner is “responsible for making the determination or decision about whether you met 13 the statutory definition of disability.... A statement by a medical source that you are ‘disabled’ or 14 ‘unable to work’ does not mean that we will determine that you are disabled.” 20 C.F.R. §§ 15 404.1527(d)(1), 416.927(d)(1); see also §§ 404.1527(d)(3), 416.927(d)(3) (“[w]e will not give 16 any special significance to the source of an opinion on issues reserved to the Commissioner.”). 17 In October 2009, Dr. MacClean opined that Plaintiff was limited to lifting no more than 18 10 pounds and no repetitive bending or stooping. (AR 367 (noting his opinions “remain 19 unchanged”)). The ALJ gave this little weight “as, by its nature, [i]t was a temporary limitation 20 and does not represent the claimant’s overall capacity during the period at issue.” (AR 823). To 21 be found disabled, a claimant must be unable to engage in any substantial gainful activity due to 22 an impairment which “can be expected to result in death or which has lasted or can be expected to 23 last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A); see also 24 Chaudhry v. Astrue, 688 F.3d 661, 672 (9th Cir. 2012). However, as noted by Plaintiff, “[i]n 25 California workers’ compensation parlance, a ‘period of temporary total disability’ means ‘that 26 period when the employee is totally incapacitated for work and during which he may reasonably 27 be expected to be cured or materially improved with proper medical attention.’” (Doc. No. 8 at 28 24 (citing W.M. Lyles Co. v. Workmen’s Comp. Appeals Bd., 3 Cal. App. 3d 132, 136 (1969))). 1 “Despite the differences between workers’ compensation and Social Security work categories, an 2 ALJ ‘may not disregard a physician’s medical opinion simply because it was elicited in a state 3 workers’ compensation proceeding, or because it is couched in terminology used in such 4

proceeding.’” *Holmes v. Astrue*, 2011 WL 2837698, at \*4 (C.D. Cal. July 15, 2011) (citing *Booth v. Barnhart*, 181 F.Supp.2d 1099, 1105 (C.D. Cal. 2002)). Moreover, as noted by Plaintiff, in his October 2009 “Orthopaedic AME Supplemental Report,” Dr. MacClean states his opinions limiting Plaintiff lifting 10 pounds and no repetitive bending and stooping “remain unchanged” regarding the issue of impairment as previously detailed in his December 2007 evaluation. (AR 366-67). Thus, rejecting Dr. MacClean’s opinion solely based on the purported “temporary” nature of the opined limitations is not supported by substantial evidence. In August 2010, Dr. MacClean again notes his opinion “remain unchanged” from the

October 2009 progress report that Plaintiff is temporarily partially disabled for the cervical spine,

i.e. no repetitive twisting of the head and neck, and no repetitive overhead use of the left upper extremity.” (AR 624). The ALJ found Dr. MacClean’s “recommended limitations” as to the upper extremity were “overly restrictive” because (1) they were inconsistent with his own examination findings, (2) Plaintiff refused the recommended treatment, and (3) any assertion that Plaintiff cannot work is a matter reserved to the Commissioner of Social Security. (AR 824). First, as noted above, the ALJ is not required to give any special significance to a medical source’s statement about Plaintiff’s ability to work, as that is an issue reserved to the

Commissioner. 20 C.F.R. §§ 404.1527(d)(1), 416.927(d)(1).

Second, an ALJ may properly reject a medical opinion if it is inconsistent with the provider’s own treatment notes. *Tommasetti*, 533 F.3d at 1041. In support of this finding, the ALJ noted that Dr. MacClean observed range of motion of Plaintiff’s head and neck is somewhat limited in the flexion, extension and rotation to the left; full and normal range of motion in upper extremities except for limitation with the left shoulder; no tenderness in either elbow; negative Tinel’s sign; negative Finkelstein’s test on the right; Finkelstein’s test on the left presented with complaints of pain in the left shoulder and neck; when performing Phalen’s Plaintiff immediately remarked it caused her fingers to go to sleep; and grip strength was 30 pounds on the right and 1 pounds on the left. (AR 622-23, 824). As noted by the ALJ, Dr. MacClean diagnosed cervical strain with radiation to the left shoulder, doubt radiculopathy and history of positive NCV study for right carpal tunnel syndrome. (AR 623, 824). However, the ALJ fails to explain why “recommended limitations” of no repetitive twisting of the head and neck and no repetitive overhead use of the left extremity are “overly restrictive” when compared with Dr. MacClean’s abnormal examination findings that pertain mostly to the head, neck, and left upper extremity, including limited range of motion, tenderness located just posterior and inferior to the mastoid process on the left, complaints of pain on the left shoulder and neck, and more limited grip strength on the left side. (AR 622-23); *Reddick*, 157 F.3d at 725 (when considering medical opinion evidence, the ALJ must do more than state a conclusion; rather, the ALJ must “set forth his own interpretations and explain why they, rather than the doctors,’ are correct.”); *Brown-Hunter*, 806 F.3d at 495. Third, the ALJ found Dr. MacClean “did not

assert any other underlying etiology, beyond 14 a ‘strain with radiation to the left shoulder’” and Dr. MacClean 15 notes that the claimant would ‘definitely’ benefit from a particular course of therapy for her complaints, but the claimant refused. Not 16 only does a ‘strain’ suggest the symptoms are not some permanent condition, but the course of treatment also suggests the symptoms are 17 [sic] would very likely respond to conservative treatment, that is, the upper extremity complaints and complaints of pain originating from 18 her neck may be relieved with a nerve block, acupuncture, and physical therapy. Dr. MacClean does not suggest the neck and 19 shoulder issues warrant surgical intervention. Nonetheless, the claimant refused the recommended treatment. The evidence shows 20 that the claimant was aware of a reasonable treatment plan that her physician determined would likely resolve her complaints. This 21 treatment plan is clearly expected to restore the claimant’s ability to use her left upper extremity without pain. The claimant did not have 22 an acceptable reason for failure to follow prescribed treatment pursuant to 20 C.F.R. 416.930, but simply refused it without 23 justification. Not only does this refusal of treatment suggest the claimant’s complaints were not very concerning to her at the time of 24 the evaluation, choosing to forego appropriate treatment does not justify a ‘disability’ status under the Regulations. 25 26 (AR 824). Pursuant to 20 C.F.R. § 416.930(a), “[i]n order to get benefits, you must follow 27 treatment prescribed by your medical source(s) if this treatment is expected to restore your ability 28 to work.” Plaintiff argues the ALJ’s finding that the treatment plan recommended by Dr. 1 MacClean was “clearly expected to resolve her complaints” and “restore the claimant’s ability to 2 use her left upper extremity without pain” was “not evidenced in the record.” (Doc. No. 18 at 3 23). The Court agrees. While Dr. MacClean did opine that Plaintiff would “definitely benefit” 4 from epidural steroid injections and it “may resolve her headaches, neck pain, and left shoulder 5 complaints,” he did not find the prescribed treatment would restore Plaintiff’s ability to work, nor 6 did the ALJ make that finding on the record. (Id.). Similarly, the ALJ does not cite to any 7 medical evidence in the record to support the reasoning that Dr. MacClean’s diagnosis of a 8 “cervical strain” is “not some permanent condition” and would “very likely respond to 9 conservative treatment.” The Court also notes that the record does not include any “refusal” by 10 Plaintiff regarding Dr. MacClean’s recommendation that acupuncture treatment and general range 11 of motion exercises under the supervision of a therapist should be “authorized,” nor does the ALJ 12 offer any specific reasoning as to why the Dr. MacClean’s opined limitations as to Plaintiff’s 13 head, neck, and upper left extremity should be discounted based on his own acknowledgment that 14 Plaintiff “does not desire any lumbar epidural steroid injections.” Cf. *Orn*, 495 F.3d at 638 15 (unexplained, or inadequately explained, failure to seek treatment or follow a prescribed course of 16 treatment may be the basis for an adverse credibility finding unless there is a showing of a good 17 reason for the failure) (emphasis added). Finally, regardless of any error in considering Plaintiff’s 18 “refusal” to undergo epidural steroid injections at this visit with Dr. MacClean, this reason, 19 standing alone, does not rise to the level of substantial evidence to entirely discount Dr. 20 MacClean’s August 2010 opinion as to Plaintiff’s

head, neck, and left upper extremity. 21 For all of these reasons, the ALJ failed to properly consider Dr. MacClean's October 2009 22 and August 2010 opinions, and those opinions should be reconsidered on remand along with all 23 relevant medical evidence and progress reports by Dr. MacClean. 24 3. Peter Mendelsohn, M.D. 25 In February 2011, Dr. Mendelsohn completed a "Primary Treating Physician's 26 Impairment Rating Evaluation" and opined that Plaintiff was able to return to modified work 27 duties of no lifting over 15 pounds and preclusion from heavy lifting (25 pounds) and very heavy 28 lifting (75 pounds), stooping, bending, kneeling, crawling, repetitive arm movements, and 1 overhead work. (AR 715). The ALJ gave his opinion "some weight" for several reasons.<sup>3</sup> First, 2 the ALJ found the preclusions from stooping, bending, kneeling, and crawling were not supported 3 his own examination findings "showing near full neurological function throughout the bilateral 4 upper and lower extremities." (AR 818 (citing AR 11)). An ALJ may properly reject a medical 5 opinion if it is inconsistent with the provider's own treatment notes. *Tommasetti*, 533 F.3d at 6 1041. However, as noted by Plaintiff, Dr. Mendelsohn's examination findings also showed 7 tenderness to palpation in occipital region, tenderness on palpation and spasm on cervical spine 8 and positive cervical facet test bilaterally, limited range of motion on cervical spine with 9 dizziness, decreased grip bilaterally with inability to obtain grip strength on the right, tenderness 10 to palpation in the lumbosacral spine, positive lumbar facet test bilaterally, positive straight leg 11 test, limited range of motion for the lumbosacral spine, and 4/5 strength throughout the lower 12 extremities. (Doc. No. 18 at 25 (citing AR 709-11)). Aside from a general reference to the 13 "normal" neurological function, the ALJ fails to consider the entirety of Dr. Mendelsohn's 14 examination findings, nor does the ALJ explain with requisite specificity how these findings do 15 not support his opined limitations on stooping, bending, kneeling, and crawling. *Reddick*, 157 16 F.3d at 725 (when considering medical opinion evidence, the ALJ must do more than state a 17 conclusion; rather, the ALJ must "set forth his own interpretations and explain why they, rather 18 than the doctors,' are correct."); *Brown-Hunter*, 806 F.3d at 495. Thus, this was not a specific 19 and legitimate reason, supported by substantial evidence, to discount Dr. Mendelsohn's opinion. 20 Defendant notes that the ALJ additionally rejected Dr. Mendelsohn's opinion because (1) 21 it was inconsistent with Plaintiff's subjective reports to Dr. Mendelsohn that she only 22 occasionally experiences paresthesia or weakness in the arms, medications relieve the pain to the 23 neck and back, and she can stand, walk, sit, lift, twist, squat, climb, and kneel, but "not for 24 prolonged periods"; and (2) Dr. Mendelsohn opined that Plaintiff has achieved "maximum benefit 25 3 Plaintiff appears to contend that the ALJ improperly discredited Dr. Mendelsohn's opinion "based on the 26 ALJ's reading of a subsequent MRI." (Doc. No. 18 at 26). However, as argued by Defendant, the ALJ did not rely on the MRI when evaluating the opinion. (Doc. No. 23 at 19). Thus, the Court is not 27 permitted to consider this reasoning as it was not offered by the ALJ in the decision. *Bray*, 554 F.3d at 1226 (the Court "review[s] the ALJ's decision based on the reasoning and factual findings offered by the 28 ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may have been thinking.").

1 from treatment to her neck and back and has reached a plateau appropriate for evaluation of 2  
'permanent impairment', which is "contradicted by" his recommendation for further treatment 3  
and medications. (AR 818-19); see *Morgan*, 169 F.3d at 603 (internal inconsistencies within a 4  
physician's report, and conflicts between claimant's testimony and a physician's opinion, 5  
constitute relevant evidence when weighing medical opinions). The Court may decline to 6  
consider this reasoning as it was not raised with specificity in Plaintiff's briefing. *Carmickle v.* 7  
*Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008). Regardless, in light of the 8  
need to remand to reevaluate the opinions of Dr. Graham and Dr. Mendelsohn, the ALJ is 9  
directed to reconsider Dr. Mendelsohn's opinion on remand.<sup>4</sup> 10 4. Diego Allende, D.O. 11  
Throughout the adjudicatory period, Dr. Allende completed multiple progress reports as to 12  
Plaintiff's "work status." (AR 305 (she has returned back to her modified work duties), 326 13  
(same), 335 (she "continues to be relatively active in a modified duty work status" and is 14  
"currently doing sitting work only"), 339 (remain off work), 384 (same), 387 (same), 391 (same),  
15 396 (she "clearly cannot go back to work"), 446 (remain off work)). In January 2010, under the  
16 heading "subjective complaints," a progress report with Dr. Allende reflects that Plaintiff "will  
be 17 returning back to modified duty with no repetitive bending, stooping, no lifting greater than  
10 18 pounds." (AR 443). In February 2010, Dr. Allende stated Plaintiff had been advised to seek  
19 work, and did not reference any work-related modifications. (AR 441). 20 Plaintiff generally  
argues the ALJ improperly "ignored" Dr. Allende's opinion that 21 Plaintiff is limited to sedentary  
work and "uses improper rationale to discredit [Plaintiff]" based 22 on her decision not to undergo  
epidural injections. (Doc. No. 18 at 20). As an initial matter, 23 4 Plaintiff "agrees" with the ALJ's  
finding that "at the time of Dr. Mendelsohn's assessment, she remained 24 capable of lifting at  
least 10 pounds" because it is "consistent with limited sedentary work, not the light exertional  
work" in the assessed RFC. (Doc. No. 18 at 27 (citing AR 825)). Defendant argues the ALJ's 25  
assessment earlier in the decision stating "at the time of Dr. Mendelsohn's assessment, Plaintiff  
remained capable of lifting 15 pounds" (AR 818) "more clearly reflects what Dr. Mendelsohn's  
report says, [and] 26 even the second discussion of his report does not limit Plaintiff to lifting no  
more than 10 pounds, but rather says she can lift at least 10 pounds. ... Because the Court can  
discern that the ALJ accepted Dr. 27 Mendelsohn's limitation to 15 pounds, affirmance is  
warranted." (Doc. No. 23 at 20). It is unnecessary for the Court to address any purported  
ambiguity in the ALJ's consideration of Dr. Mendelsohn's opinion 28 in light of the need to  
remand for reevaluation of the medical opinion evidence identified herein. 1 Defendant argues the  
ALJ did not err by not addressing Dr. Allende's January 2010 progress 2 report because "he did  
not offer an assessment as [to] his own opinion about what Plaintiff could 3 do despite her  
limitations but rather as a summation about what Plaintiff subjectively reported she 4 would be  
doing." (Doc. No. 23 at 10). The Court agrees. The ALJ did not err in failing to 5 specifically  
discuss and provide reasons for rejecting Dr. Allende's "opinions" because a plain 6 reading of his  
treatment records indicates he did not assess any functional limitations. See, e.g., 7 *Turner v.*

Comm'r of Soc. Sec. Admin., 613 F.3d 1217, 1223 (9th Cir. 2010) (where physician's 8 report did not assign any specific limitations or opinions in relation to an ability to work, "the 9 ALJ did not need to provide [reasons] for rejecting [the] report because the ALJ did not reject any 10 of [the report's] conclusions"). 11 Next, to the extent discernable, Plaintiff argues that (1) Dr. Allende "increased" Plaintiff's 12 lifting ability because she was "reticent about epidurals," and (2) the ALJ used "improper 13 rationale" in discrediting Plaintiff due to noncompliance with treatment. (Doc. No. 18 at 19-21). 14 First, Plaintiff does not cite, nor does the Court discern, any lifting limitations opined by Dr. 15 Allende during the relevant adjudicatory period. Similarly, Dr. Allende's January 2010 progress 16 report noting Plaintiff's decision not to pursue epidural steroid injections and her reasons for 17 declining the injection, is included in the ALJ's summary of the medical evidence as part of his 18 consideration of Plaintiff's symptom claims, but any "noncompliance" is not asserted in relation 19 to her report at the same treatment visit that she was returning to modified work duty. (See AR 20 443 (noting Plaintiff decided not to undergo injections because she was "really concerned about 21 the possibility of having a spinal nerve injury as the result of the procedure so she declined"), 22 816); Bray, 554 F.3d at 1226 (the Court "review[s] the ALJ's decision based on the reasoning and 23 factual findings offered by the ALJ—not post hoc rationalizations that attempt to intuit what the 24 adjudicator may have been thinking."). 25 Based on the foregoing, the Court finds no error in the ALJ's consideration of Dr. 26 Allende's treatment records. Regardless, the ALJ shall consider all relevant medical evidence on 27 remand, as directed below. 28

1 5. Abel Quesada, M.D. 2 In early 2012, Dr. Quesada completed several progress reports in the context of Plaintiff's 3 worker's compensation claim. Plaintiff appears to argue that these reports include the opinion 4 that Plaintiff is limited to "no repetitive twisting of the head and neck and no repetitive overhead 5 use of the left upper extremity." (Doc. No. 18 at 28 (citing AR 327, 624, 718, 2057, 2074)). 6 Presumably in support of this contention, Plaintiff generally cites Dr. Allende's February 2009 7 progress report (AR 327), Dr. MacClean's August 2010 "Orthopedic Agreed Medical Re- 8 examination" (AR 624), and Dr. Mendelsohn's December 2010 progress report, without 9 argument as to how these progress reports are referenced by Dr. Quesada in the 2012 progress 10 reports. (Doc. No. 18 at 28). As noted by Defendant, Dr. Quesada's reports do not opine any 11 specific functional limitations; rather, they appear to reference previous unidentified findings as 12 indicated by Dr. Quesada's handwritten notes "Per AME" and "Per P&S." (Doc. No. 23 at 20; 13 AR 2058, 2061, 2074). Thus, the ALJ did not err in failing to specifically discuss and provide 14 reasons for rejecting Dr. Quesada's "opinions" because a plain reading of his treatment records 15 indicates he did not assess any functional limitations. See Turner, 613 F.3d at 1223. 16 The Court finds no error in the ALJ's consideration of Dr. Quesada's progress reports. 17 Regardless, the ALJ shall consider all relevant medical evidence on remand, as directed below. 18

6. Miscellaneous Arguments 19 First, the ALJ gave limited weight to the opinion of state agency reviewing physicians C. 20 De La Rosa, M.D. "due to its remote nature," and limited weight to the opinion of state agency 21

reviewing physician L. Bobba, M.D. “for the period prior to the established onset date as [it] is 22 not supported in respect to exertional capacities as the longitudinal record suggests that the 23 claimant retained patent strength and had no wasting upon examination.” (AR 821-22). Plaintiff 24 does not assert any error as to the ALJ’s evaluation of these opinions. See Carmickle, 533 F.3d at 25 1161 n.2 (court may decline to address issue not raised with specificity in Plaintiff’s briefing). 26 Rather, Plaintiff’s sole contention is that the opinions are not included in the record. (Doc. No. 18 27 at 28). This argument is inapposite, as both opinions are available in the record as cited in the 28 ALJ’s decision. (AR 821-22 (citing AR 484-88, 1090-1129)). 1 Second, Plaintiff cites procedural history from this case, without additional argument, 2 including the December 2013 state agency reviewing physician Keith Quint, M.D. adopting Dr. 3 Mendelsohn’s opinion (AR 1055), the SSA’s application of Chavez to the 2011 determination in 4 the January 2014 initial denial of benefits (AR 1073), and the July 2014 decision of the District 5 Court and resulting Appeals Council order in December 2014 remanding to the Commissioner for 6 further administrative proceedings and a new decision (AR 979-999). Plaintiff does not make any 7 argument that the ALJ erred in considering Dr. Quint’s opinion. Moreover, as noted by 8 Defendant, the ALJ did not apply Chavez in the March 2024 decision at issue, nor does Plaintiff 9 make any argument as such. See Carmickle, 533 F.3d at 1161 n.2 (court may decline to address 10 issue not raised with specificity in Plaintiff’s briefing). 11 B. Remedy 12 Plaintiff contends that the Court should remand for payment of benefits for the period 13 before December 8, 2014. (Doc. No. 18 at 29-32). The decision whether to remand for further 14 proceedings or reverse and award benefits is within the discretion of the district court. *McAllister 15 v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate 16 where “no useful purpose would be served by further administrative proceedings, or where the 17 record has been thoroughly developed,” *Varney v. Sec’y of Health & Human Servs.*, 859 F.2d 18 1396, 1399 (9th Cir. 1988), or when the delay caused by remand would be “unduly 19 burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280 (9th Cir. 1990); see also *Garrison*, 759 20 F.3d at 1021 (noting that a district court may abuse its discretion not to remand for benefits when 21 all of these conditions are met). This policy is based on the “need to expedite disability claims.” 22 *Varney*, 859 F.2d at 1401. Courts have credited evidence and remanded for an award of benefits 23 where: (1) the ALJ has failed to provide legally sufficient reasons for rejecting such evidence; (2) 24 the record has been fully developed and there are no outstanding issues that must be resolved 25 before a disability determination can be made; and (3) it is clear from the record that the ALJ 26 would be required to find the claimant disabled were such evidence credited. See *Treichler v. 27 Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1100-02 (9th Cir. 2014); *Revels v. Berryhill*, 874 28 F.3d 648, 668 (9th Cir. 2017); *Garrison*, 759 F.3d at 1020 (citations omitted). 1 However, even where the three prongs have been satisfied, the Court will not remand for 2 immediate payment of benefits if “the record as a whole creates serious doubt that a claimant is, 3 in fact, disabled.” *Garrison*, 759 F.3d at 1021. Thus, where there are outstanding issues that 4 must be resolved before a determination can be

made, and it is not clear from the record that the 5 ALJ would be required to find a claimant disabled if all the evidence were properly evaluated, 6 remand for further proceedings is appropriate. See *Benecke v. Barnhart*, 379 F.3d 587, 595-96 7 (9th Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000). 8 Plaintiff notes that she has been seeking benefits since September 24, 2009 and 9 summarizes “long and tortured history of this case” including five determinations, five hearings, 10 one District Court remand, and there Appeals Council findings. (Doc. No. 18 at 29-32). She 11 argues the delay in the repeated remands in this case have become “unconscionable,” and “if the 12 [Court] credits even the ALJ’s 2020 finding of sedentary with simple tasks, or the Dr. 13 MacClean’s finding of no twisting/rotation of the neck, a favorable determination is warranted.” 14 (Id. at 31-32). The Court is sympathetic to further delay in resolution of Plaintiff’s disability 15 status; however, this alone cannot provide a basis to award benefits. See *Treichler*, 775 F.3d at 16 1106. However, as argued by Defendant, Plaintiff “fails to specify how her case meets all the 17 demanding requirements for such a drastic remedy.” (Doc. No. 23 at 22); see *Marshall M. v. 18 Comm’r Soc. Sec. Admin.*, 2024 WL 2317386, at \*9 (D. Or. May 22, 2024) (“Plaintiff has not 19 meaningfully argued that remand for immediate benefits is appropriate.”). In particular, while the 20 Court has found that the ALJ failed to give legally sufficient reasons for rejecting several medical 21 opinions, Plaintiff makes no argument specifically as to why there are no outstanding issues that 22 must be resolved before a disability determination can be made. After reviewing the voluminous 23 record as a whole, the Court cannot say that further administrative proceedings would serve no 24 useful purpose, particularly in resolving conflicts and ambiguities in the medical opinion evidence 25 throughout the adjudicatory period, and as needed to establish a precise date of disability, if 26 warranted. See *Treichler*, 775 F.3d at 1103-04 (remand for benefits is not appropriate when 27 further administrative proceedings would serve a useful purpose); *Leon v. Berryhill*, 880 F.3d 28 1041, 1047 (9th Cir. 2017) (it is only “rare circumstances that result in a direct award of benefits” 1 | and “only when the record clearly contradicted an ALJ’s conclusory findings and no substantial 2 | evidence within the record supported the reasons provided by the ALJ for denial of benefits.”). 3 Thus, the Court finds that further administrative proceedings are appropriate. Here, the 4 | ALJ improperly considered the medical opinion evidence, which calls into question whether the 5 || assessed REC, and resulting hypothetical propounded to the vocational expert, are supported by 6 | substantial evidence. On remand, the ALJ is directed to reevaluate the medical opinions of 7 | Robert Graham, M.D., Craig R. MacClean, M.D., and Peter Mendelsohn, M.D., as well as all 8 | relevant medical evidence. The ALJ should conduct a new sequential analysis, reassess 9 | Plaintiff’s RFC and, only if necessary, take additional testimony from a vocational expert which 10 includes all of the limitations credited by the ALJ. 11 Accordingly, it is ORDERED: 12 1. Plaintiff’s Motion for Summary Judgment (Doc. No. 18) is GRANTED in part. 13 2. Defendant’s Cross-Motion for Summary Judgment (Doc. No. 23) is DENIED. 14 3. Pursuant to sentence four of 42 U.S.C. § 405(g), the Court REVERSES the 15 Commissioner’s decision and REMANDS this

case back to the Commissioner of Social Security for further proceedings consistent with this Order. 17 4. An application for attorney fees may be filed by separate motion within thirty (30) 18 days. 19 5. The Clerk shall enter judgment in favor of the Plaintiff, terminate any pending 20 motions/deadlines, and close this case. 21 | Dated: \_ August 21, 2025 Mihaw. Wh. foareh fackte  
23 HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE  
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