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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARY A. JACKSON, ) Case No.: CV 16-07543 (JDE)  
)  
Plaintiff, )  
) MEMORANDUM OPINION AND  
vs. ) ORDER  
)  
NANCY A. BERRYHILL,<sup>1</sup> Acting )  
Commissioner of Social Security, )  
)  
Defendant. )  
\_\_\_\_\_ )

I.  
**PROCEEDINGS**

Plaintiff filed the Complaint herein on October 8, 2016 seeking review of the Commissioner’s denial of her application for disability insurance benefits (“DIB”) and supplemental security income (“SSI”) under Titles II and XVI of the Social Security Act. (Dkt. No. 1.) The parties filed consents to proceed before the undersigned Magistrate Judge. (Dkt. Nos. 16, 19.) Pursuant to the Court’s Case

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<sup>1</sup> Nancy A. Berryhill is now Acting Commissioner of Social Security (“Commissioner” or “Defendant”) and is substituted in as defendant. See 42 U.S.C. 205(g).

1 Management Order (“CMO”), the parties filed a Joint Stipulation (“Jt. Stip.”) on  
2 May 24, 2017 addressing their respective positions. (Dkt. No. 21.) The Court has  
3 taken the Joint Stipulation under submission without oral argument. As set forth  
4 in the CMO, this decision made based on the pleadings, the Administrative  
5 Record, and the Joint Stipulation of the parties under Rule 12(c) of the Federal  
6 Rules of Civil Procedure applying the standards set forth in 42 U.S.C. § 405(g).

## 7 II.

### 8 STANDARD OF REVIEW

9 Persons are “disabled” for purposes of receiving Social Security benefits if  
10 they are unable to engage in any substantial gainful activity owing to a physical or  
11 mental impairment that is expected to result in death or which has lasted or is  
12 expected to last for a continuous period of no less than twelve months. 42 U.S.C. §  
13 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992). In assessing  
14 disability claims, an Administrative Law Judge (“ALJ”) conducts a five-step  
15 sequential evaluation to determine at each step if the claimant is or is not disabled.  
16 See Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012) (citing, *inter alia*, 20  
17 C.F.R. §§ 404.1520(a), 416.920(a)). First, the ALJ considers whether the claimant  
18 is currently working in substantial gainful activity. Id. If not, the ALJ proceeds to a  
19 second step to determine whether the claimant has a “severe” medically  
20 determinable physical or mental impairment or combination of impairments that  
21 has lasted for more than 12 months. Id. If so, the ALJ proceeds to a third step to  
22 determine whether the claimant’s impairments render the claimant disabled  
23 because they “meet or equal” any one of the “listed impairments” set forth in the  
24 Social Security regulations at 20 C.F.R. Part 404, Subpart P, Appendix 1. See  
25 Rounds v. Comm’r Soc. Sec. Admin., 807 F.3d 996, 1001 (9th Cir. 2015).

26 If the claimant’s impairments do not meet or equal a “listed impairment,”  
27 before proceeding to the fourth step the ALJ assesses the claimant’s residual  
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1 functional capacity (“RFC”).<sup>2</sup> 20 C.F.R. § 416.920(d), 416.945; Social Security  
2 Ruling (“SSR”) 96-8p. After determining the claimant’s RFC, the ALJ determines  
3 at the fourth step whether the claimant has the RFC to perform past relevant work,  
4 either as she actually performed it or as it is generally performed in the national  
5 economy. 20 C.F.R. § 416.920(f). If the claimant cannot perform her past relevant  
6 work, the ALJ proceeds to a fifth and final step to determine whether there is any  
7 other work, in light of the claimant’s RFC, age, education, and work experience,  
8 that the claimant can perform and that exists in “significant numbers” in either the  
9 national or regional economies. 20 C.F.R. § 416.920(g); Tackett v. Apfel, 180 F.3d  
10 1094, 1100-01 (9th Cir. 1999). If the claimant can do other work, she is not  
11 disabled; but if the claimant cannot do other work and meets the duration  
12 requirement, the claimant is disabled. Tackett, 180 F.3d at 1099.

13 The claimant generally bears the burden at each of steps one through four to  
14 show that she is disabled or that she meets the requirements to proceed to the next  
15 step, and the claimant bears the ultimate burden to show that she is disabled. See,  
16 e.g., Molina, 674 F.3d at 1110; Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir.  
17 1995). However, at step five, the ALJ has a limited burden of production to  
18 identify representative jobs that the claimant can perform that exist in significant  
19 numbers in the economy. See 20 C.F.R. §§ 404.1560(c)(1)-(2), 416.960(c)(1)-(2);  
20 Hill v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Tackett, 180 F.3d at 1100.

21 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision  
22 denying benefits to determine whether it is free from legal error and supported by  
23 substantial evidence in the record as a whole. Orn v. Astrue, 495 F.3d 625, 630 (9th  
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26 <sup>2</sup> The RFC is what a claimant can still do despite existing exertional and non-exertional  
27 limitations. See Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). “Between  
28 steps three and four of the five-step evaluation, the ALJ must proceed to an intermediate  
step in which the ALJ assess the claimant’s residual functional capacity.” Massachi v. Astrue, 486 F.3d 1149, 1151 n.2 (9th Cir. 2007) (citation omitted).

1 Cir. 2007). “Substantial evidence is ‘more than a mere scintilla but less than a  
2 preponderance; it is such relevant evidence as a reasonable mind might accept as  
3 adequate to support a conclusion.’” Gutierrez v. Comm’r of Soc. Sec., 740 F.3d  
4 519, 522-23 (9th Cir. 2014) (internal citations omitted).

5 Although courts will not substitute their discretion for the Commissioner’s,  
6 courts nonetheless must review the record as a whole, “weighing both the evidence  
7 that supports and the evidence that detracts from the Commissioner’s conclusion.”  
8 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation  
9 marks and citation omitted).

10 “The ALJ is responsible for determining credibility, resolving conflicts in  
11 medical testimony, and for resolving ambiguities.” Andrews v. Shalala, 53 F.3d  
12 1035, 1039 (9th Cir. 1995). “Even when the evidence is susceptible to more than  
13 one rational interpretation, we must uphold the ALJ’s findings if they are  
14 supported by inferences reasonably drawn from the record.” Molina, 674 F.3d at  
15 1110; see also Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (court will  
16 uphold decision when evidence is susceptible to more than one rational  
17 interpretation). However, a court may review only the reasons stated by the ALJ in  
18 his decision “and may not affirm the ALJ on a ground upon which he did not  
19 rely.” Orn, 495 F.3d at 630; see also Connett v. Barnhart, 340 F.3d 871, 874 (9th  
20 Cir. 2003).

21 Lastly, even when legal error is found, the reviewing court will still uphold  
22 the decision if the error was harmless, that is, where it is inconsequential to the  
23 ultimate non-disability determination, or where, despite the error, the  
24 Commissioner’s path “may reasonably be discerned,” even if the Commissioner  
25 explains her decision “with less than ideal clarity.” Brown-Hunter v. Colvin, 806  
26 F.3d 487, 492 (9th Cir. 2015) (citations omitted).

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**III.**

**SUMMARY OF ADMINISTRATIVE PROCEEDING**

Plaintiff was born December 9, 1966. (AR 34.) Plaintiff applied for supplemental security income on July 31, 2013, and also filed an application for disability insurance benefits on August 5, 2013. (AR 149-58, 159-62.) The application was denied on initial review and again on reconsideration, after which Plaintiff requested that her claim be heard before an ALJ. (AR 111-12.) An ALJ held a hearing on March 12, 2015 where Plaintiff provided testimony, as did a Vocational Expert (“VE”). (AR 50-75.)

The ALJ then used the five-step sequential evaluation process to guide the decision. At step one, the ALJ determined that Plaintiff met the insured status requirements through December 31, 2018 and had not engaged in substantial gainful activity since January 1, 2013. (AR 28.) At step two, the ALJ concluded that Plaintiff had the following severe impairments: asthma, mental depression and anxiety. (AR 28-29.)

At step three, the ALJ decided that the impairments did not meet or equal any “listed impairment” (*id.*) and found that through the date last insured Plaintiff retained the RFC to perform medium work with the following limitations:

“[Plaintiff] can lift and/or carry 50 pounds occasionally and 25 pounds frequently. She can stand and/or walk for six hours in an eight hour workday, and can sit for six hours in an eight hour workday, with normal breaks. She can frequently push and pull. She is restricted from excessive dust, fumes or temperature extremes. She can occasionally perform detailed or complex tasks and have frequent contact with supervisors, coworkers, and the general public. She has no other limitations” (AR 31.)

1 At step four, the ALJ stated that Plaintiff had no past relevant work, had a  
2 limited education, and transferable skills was not an issue. (AR 34.)

3 At step five, based on Plaintiff's age, education, RFC vocational factors, and  
4 the VE's testimony, the ALJ found that there were jobs existing in significant  
5 numbers in the national economy that Plaintiff could perform, including work as a  
6 (1) Packer, (Dictionary of Occupational Titles ("DOT") 920.587-018); and (2)  
7 grocery bagger (DOT 920.687-014). (AR 34-35.) Accordingly, on April 22, 2015,  
8 the ALJ determined that Plaintiff was not disabled during the relevant period from  
9 January 1, 2013 through the date of the decision. (AR 35.)

10 On June 18, 2015, Plaintiff requested that the Appeals Council review the  
11 decision by the ALJ. (AR 16-18.) On August 10, 2016, the Appeals Council denied  
12 the request for review. (AR 1-8.) This action followed.

#### 13 IV.

#### 14 THE ALJ ERRED IN FAILING TO INCLUDE PLAINTIFF'S 15 MENTAL IMPAIRMENTS IN THE RFC ASSESSMENT

16 Plaintiff contends that the ALJ failed to properly consider an examining  
17 physician's opinion and as a result impermissibly rejected such opinion. (Jt. Stip. at  
18 7.) Though the ALJ stated that he ascribed "significant weight" to the opinion of  
19 Dr. Kapitanski, which contained several limitations on Plaintiff's ability to interact  
20 with others, such limitations were not incorporated into Plaintiff's RFC. (AR 34.)

21 Plaintiff takes issue with the ALJ's conclusion that Plaintiff could  
22 "occasionally perform detailed or complex tasks and have frequent contact with  
23 supervisors, coworkers, and the general public." (AR 31.) She contends that the  
24 ALJ's conclusions are incompatible with the opinion of the examining physician,  
25 Dr. Kapitanski, that Plaintiff "would have moderate limitations completing a  
26 normal workday or work week" and moderate difficulties in handling "usual  
27 stresses, changes and demands of gainful employment." (AR 479.)  
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1           **a.           Applicable Law**

2           The ALJ's RFC is not a medical determination but an administrative finding  
3 or legal decision reserved to the Commissioner based on consideration of all the  
4 relevant evidence, including medical evidence, lay witnesses, and subjective  
5 symptoms. See SSR 96-5p; 20 C.F.R. § 404.1527(e). In determining a claimant's  
6 RFC, an ALJ must consider all relevant evidence in the record, including medical  
7 records, lay evidence, and the effects of symptoms, including pain reasonably  
8 attributable to the medical condition. Robbins v. Soc. Sec. Admin., 466 F.3d 880,  
9 883 (9th Cir. 2006).

10           In determining RFC, the ALJ is required to consider the combined effect of  
11 all the claimant's impairments, mental and physical, exertional and non-  
12 exertional, severe and non-severe. 42 U.S.C. §§ 423(d)(2)(B), (5)(B). In weighing  
13 medical source opinions in Social Security cases, the Ninth Circuit distinguishes  
14 among three types of physicians: (1) treating physicians, who actually treat the  
15 claimant; (2) examining physicians, who examine but do not treat the claimant;  
16 and (3) non-examining physicians, who neither treat nor examine the claimant.  
17 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). "Generally, a treating physician's  
18 opinion carries more weight than an examining physician's, and an examining  
19 physician's opinion carries more weight than a reviewing physician's." Holohan v.  
20 Massanari, 246 F.3d 1195, 1201-02 (9th Cir. 2001).

21           If a treating or examining physician's opinion is uncontradicted, an ALJ  
22 may reject it only by offering "clear and convincing reasons that are supported by  
23 substantial evidence." Bayliss v. Barhnart, 427 F.3d 1211, 1216 (9th Cir. 2005)  
24 (citing Lester, 81 F.3d at 830-31). If an "examining doctor's opinion is  
25 contradicted by another doctor's opinion, an ALJ may only reject it by providing  
26 specific and legitimate reasons that are supported by substantial evidence." Bayliss,  
27 427 F.3d at 1216 (citing Lester, 81 F.3d at 830-31). Also, "the ALJ need not accept  
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1 the opinion of any physician . . . if that opinion is brief, conclusory and  
2 inadequately supported by clinical findings.” Bray v. Comm’r of Soc. Sec. Admin.,  
3 554 F.3d 1219, 1228 (9th Cir. 2009); Tonapetyan v. Halter, 242 F.3d 1144, 1149  
4 (9th Cir. 2011). Further, the weight given a physician’s opinion depends on  
5 whether it is consistent with the record and accompanied by adequate explanation,  
6 the nature and extent of the treatment relationship, and the doctor’s specialty,  
7 among other things. 20 C.F.R. §§ 404.1527(c)(3)-(6), 416.927(c)(3)-(6).

8 **b. Analysis.**

9 The Court is not persuaded by the Commissioner’s arguments that the  
10 record reflects that the ALJ accorded appropriate weight to the opinion of  
11 examining physician, Dr. Kapitanski, a board certified psychiatrist. Dr. Kapitanski  
12 wrote in her treatment notes:

13 [Plaintiff] exhibits no difficulty interacting with clinical staff or  
14 myself. She has mild difficulty maintaining composure and even  
15 temperament. She has mild difficulties in maintaining social  
16 functioning. She has mild difficulties focusing and maintaining  
17 attention. She has mild difficulties in concentration, persistence  
18 and pace. The level of personal independence is good. She is  
19 intellectually and psychologically capable of performing activities  
20 of daily living (ADLs.)

21 Based on the objective findings presented during this interview,  
22 [Plaintiff] would have no limitations performing simple and  
23 repetitive tasks and moderate limitations performing detailed and  
24 complex tasks. Plaintiff] would have mild difficulties to be able to  
25 perform work activities on a consistent basis without special or  
26 additional supervision. [Plaintiff] would have moderate limitations  
27 completing a normal workday or work week due to her mental  
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1 condition. [Plaintiff] would have mild limitations accepting  
2 instructions from supervisors and interacting with coworkers and  
3 with the public. She would have moderate difficulties to be able to  
4 handle the usual stresses, changes and demands of gainful  
5 employment. (AR 479.)

6 In assessing Plaintiff's impairments, the ALJ found that Plaintiff  
7 suffered from three severe impairments: asthma, depression, and anxiety.  
8 (AR 28.) The ALJ took pains to describe the reasons why Plaintiff's  
9 mental impairments, while severe, fell short of meeting or medically  
10 equaling the criteria for the disability listings of depressive or anxiety  
11 disorders. (AR 30.) He also noted each of the limitations from Dr.  
12 Kapitanski's notes in his decision, along with those of other examining  
13 and non-examining physicians, prior to his RFC assessment. (AR 33.)  
14 The ALJ stated that his assessment was consistent with assessments of  
15 Plaintiff's examining physicians, including Dr. Kapitanski, and that he  
16 had accorded each physician's opinion significant weight. (AR 34.)

17 The question for the Court is whether the ALJ accorded  
18 appropriate weight to the opinion of Dr. Kapitanski. The Court finds  
19 that he did not. As stated previously, the ALJ found that Plaintiff was  
20 capable of performing medium work with certain physical and non-  
21 physical limitations. (AR 31.) With respect to non-physical limitations,  
22 the ALJ concluded that Plaintiff, "can occasionally perform detailed or  
23 complex tasks and have frequent contact with supervisors, coworkers,  
24 and the general public." (*Id.*) This stands in contrast with Dr.  
25 Kapitanski's conclusions that Plaintiff would have mild difficulty  
26 accepting instructions from supervisors and interacting with co-workers  
27 and the public. (AR 479.)  
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1 The ALJ erred in accepting Dr. Kapitanski's opinion, "but then  
2 failing to explain why he did not accept or incorporate important aspects  
3 of that opinion into Plaintiff's RFC." Richardson v. Colvin, 2016 WL  
4 4487823, at \*5 (C.D. Cal. Aug. 23, 2016) (finding an ALJ erred in  
5 accepting an examining physician's opinion but not incorporating it into  
6 the RFC moderate limitations with regard to claimant's ability to interact  
7 with the public, supervisors, and coworkers); see also Le v. Colvin, 2016  
8 U.S. Dist. LEXIS 54944, at \*4-8 (C.D. Cal. Apr. 22, 2016) (finding an  
9 ALJ erred in purportedly giving significant weight to an examining  
10 psychologist's opinion, which included moderate limitations in the  
11 plaintiff's ability to interact with coworkers and respond to usual work  
12 situations, without including these limitations in the plaintiff's RFC).

13 Other courts in this circuit have reached similar conclusions  
14 regarding the error inherent an RFC's omission or misinterpretation of a  
15 limitation regarding interactions with supervisors and co-workers and  
16 the Court agrees with their reasoning. Dennis v. Colvin, 2015 WL  
17 3867506, at \*8 (D. Or. June 20, 2015) (finding error in ALJ's crediting  
18 the opinion of a medical source, which included a limitation on the  
19 ability to interact with supervisors, but omitting the limitation in the  
20 RFC); Gentry v. Colvin, 2013 WL 6185170, at \*14-17 (E.D. Cal. Nov.  
21 26, 2013) (finding ALJ erred in crediting an examining psychologist's  
22 opinion that the claimant had moderate limitations in the ability to  
23 interact appropriately with coworkers, supervisors, and the public, but  
24 failing to include such limitations in the RFC or in a hypothetical  
25 question to the VE); see Sackett v. Colvin, 2013 WL 1966156, at \*7-8  
26 (W.D. Wash. Apr. 9, 2013) (finding ALJ erred by failing to include in the  
27 RFC the limitations claimant's treating physician identified relating to  
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1 the ability to interact with co-workers and supervisors, though the ALJ  
2 had given the opinion “great weight”).

3 The ALJ makes no mention in his RFC about Plaintiff’s  
4 limitations related to: performing work on a consistent basis without  
5 special or additional attention; completing a normal workday or week  
6 owing to her mental condition; or handling the usual stresses, changes  
7 and demands of employment. (See AR 31.) Nor did the ALJ include any  
8 of these limitations in the three separate hypotheticals he posed to the  
9 VE during the administrative hearing. (See AR 72-75.)

10 The RFC does reference Plaintiff’s ability to interact with  
11 coworkers, supervisors, and the public, but the ALJ’s conclusions in this  
12 regard are inconsistent with the limitations set forth by Dr. Kapitanski.  
13 And while the ALJ did include some mention of limitations in his  
14 hypothetical to the VE, they were confusing and did not accurately  
15 reflect the limitations opined by Dr. Kapitanski. The Court notes the  
16 following exchange between the ALJ and the VE:

17 **ALJ:** Hypothetical Person #2 has the same limitations I described  
18 for Hypothetical Person #1. This person can do detailed tasks  
19 occasionally, but not frequently. This person can deal with  
20 coworkers, supervisors, and the general public frequently, but not  
21 constantly. Could this person do the past work of this [Plaintiff].

22 **VE:** No.

23 **ALJ:** No?

24 **VE:** No, because this person would have to continually interact  
25 and deal with the public and take care of others.

26 **ALJ:** As a home attendant?  
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1 VE: Well, as a – well, the public in terms of the patient I’m  
2 viewing as the public.

3 ALJ: Okay, the patient’s not the public. The – working as a home  
4 attendant, I mean, dealing with the general public. That’s what  
5 that means.

6 VE: Oh, I see what you’re saying. No, the person would not be  
7 dealing with the general public, other than that individual so --

8 ALJ: So this person could that?

9 VE: -- I would say that person could do the past work both as  
10 described by [Plaintiff] and as commonly performed –

11 ALJ: Alright.

12 VE: -- and described in the DOT.

13 ALJ: Could this person do other work?

14 VE: Yes, I would say all of the positions I had noted previously.  
15 (AR 73-74.)

16 This line of questioning is problematic for several reasons. First,  
17 the passage indicates a fair amount of confusion around how to apply  
18 the ALJ’s hypothetical. Second, it appears that the VE initially believed  
19 that Plaintiff would be unable to perform her past work as a home  
20 attendant if it required frequent interaction with the public. Considering  
21 that the hypothetical builds to a question of whether Plaintiff would be  
22 able to perform other work based on the limitations in the hypothetical,  
23 having greater clarity over the VE’s interpretation of Plaintiff’s  
24 limitations in interacting with others is consequential to the ultimate  
25 disability decision.

26 Third, and most significantly, the ALJ mischaracterizes Plaintiff’s  
27 limitations. Dr. Kapitanski opined that Plaintiff would have “mild  
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1 limitations accepting instructions from supervisors and interacting with  
2 coworkers and with the public.” (AR 479.) The ALJ’s hypothetical  
3 question recast the limitation as: “[t]his person can deal with coworkers,  
4 supervisors and the general public frequently but not constantly.” That  
5 re-characterization does not accurately reflect Dr. Kapitanski’s opinion  
6 in either letter or spirit. As a result, contrary to the ALJ’s statement in  
7 his decision, the VE’s opinion did not accurately take into account the  
8 limitations set forth in Dr. Kapitanski’s opinion.

9 **c. Remand is Warranted.**

10 The decision whether to remand for further proceedings is within this  
11 Court’s discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000).  
12 Where no useful purpose would be served by further administrative proceedings,  
13 or where the record has been fully developed, it is appropriate to exercise this  
14 discretion to direct an immediate award of benefits. Id. at 1179 (noting that “the  
15 decision of whether to remand for further proceedings turns upon the likely utility  
16 of such proceedings”); Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004).

17 A remand is appropriate, however, where there are outstanding issues  
18 that must be resolved before a determination of disability can be made and it  
19 is not clear from the record that the ALJ would be required to find the  
20 claimant disabled if all the evidence were properly evaluated. Bunnell v.  
21 Barnhart, 336 F.3d 1112, 1115-16 (9th Cir. 2003); see also Garrison v.  
22 Colvin, 759 F.3d 995, 1021 (9th Cir. 2014) (explaining that courts have  
23 “flexibility to remand for further proceedings when the record as a whole  
24 creates serious doubt as to whether the claimant is, in fact, disabled within  
25 the meaning of the Social Security Act.”). Remand is appropriate where, as  
26 here, the ALJ finds a physician’s opinion credible, but then fails to  
27 include or address material aspects of that opinion in the RFC  
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1 determination. See Bagby v. Comm’r of Soc. Sec., 606 Fed. Appx. 888,  
2 890 (9th Cir. 2015) (finding reversible error in the ALJ’s failure to  
3 include a claimant’s limitations related to her ability to “[r]espond  
4 appropriately to usual work situations and changes to routine work”  
5 when he assessed an RFC that would allow for “occasional interaction  
6 with coworkers.”).

7 Here, remand is appropriate for the ALJ to fully and properly consider Dr.  
8 Kapitanski’s opinion and to determine whether that opinion supports a finding of  
9 disability. On remand, the ALJ shall either (1) provide clear and convincing  
10 reasons for rejecting Dr. Kapitanski’s opinions, pursuant to Lester, 81 F.3d, at 83-  
11 831; or (2) include the limitations set forth by the doctor in the RFC assessment  
12 and any hypothetical questions posed to the VE.

13 **V.**

14 **CONCLUSION AND ORDER**

15 For the reasons stated above, IT IS ORDERED that the decision of the  
16 Commissioner is REVERSED, and this case is REMANDED for further  
17 proceedings consistent with this Memorandum Opinion and Order.

18 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies  
19 of this Memorandum Opinion and Order and the Judgment on counsel for  
20 plaintiff and for defendant.

21 LET JUDGMENT BE ENTERED ACCORDINGLY.

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23  
24 DATED: July 5, 2017

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26 \_\_\_\_\_  
27 JOHN D. EARLY  
28 United States Magistrate Judge