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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

JUDY MACIEL,)	Case No. CV 17-05739-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	ORDER OF REMAND
v.)	
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

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22 On August 3, 2017, Plaintiff filed a Complaint seeking review of
23 the denial of her application for Supplemental Security Income. (Docket
24 Entry No. 1). The parties have consented to proceed before the
25 undersigned United States Magistrate Judge. (Docket Entry Nos. 11-12).
26 On December 28, 2017, Defendant filed an Answer along with the
27 Administrative Record ("AR"). (Docket Entry Nos. 15-16). The parties
28 filed a Joint Submission ("Joint Stip.") on April 4, 2018, setting forth

1 their respective positions regarding Plaintiff's claim. (Docket Entry
2 No. 18).

3
4 The Court has taken this matter under submission without oral
5 argument. See C.D. Cal. L.R. 7-15.
6

7
8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
9

10 On December 10, 2013, Plaintiff, formerly employed as an office
11 worker for a college (see AR 265, 288), filed an application for
12 Supplemental Security Income, alleging a disability since January 1,
13 2006. (AR 195-201).
14

15
16 On July 21, 2015 and January 14, 2016, the Administrative Law Judge
17 ("the ALJ"), James Goodman, heard testimony from Plaintiff (who was
18 represented by counsel). (See AR 40-63, 66-85). On March 21, 2016, the
19 ALJ issued a decision denying Plaintiff's application. (See AR 22-32).
20 After determining that Plaintiff had severe impairments -- rheumatoid
21 arthritis and Sjogren's syndrome, in combination (AR 25)¹ -- but did not
22 have an impairment or combination of impairments that met or medically
23 equaled the severity of one of the listed impairments (AR 26), the ALJ
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¹ The ALJ found that Plaintiff's other impairments -- lower back
dysfunction, Raynaud's phenomenon, obesity, and depression -- were
nonsevere. (AR 25-26).

1 found that Plaintiff had the residual functional capacity ("RFC")² to
2 perform light work³ with the following limitations: can lift and/or carry
3 20 pounds occasionally and 10 pounds frequently; can stand/walk with
4 normal breaks for 4 hours in an 8-hour workday; can sit with normal
5 breaks for 8 hours in an 8-hour workday; can climb, balance, bend,
6 stoop, kneel and crawl frequently; and should avoid dangerous heights
7 and dangerous moving machinery. (AR 26-30). The ALJ then determined
8 that Plaintiff was not able to perform any past relevant work (AR 30),
9 but that jobs existed in significant numbers in the national economy
10 that Plaintiff can perform, and therefore found that Plaintiff was not
11 disabled within the meaning of the Social Security Act. (AR 30-32).
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15 The Appeals Council denied Plaintiff's request for review on
16 February 22, 2016. (See AR 1-5, 194). Plaintiff now seeks judicial
17 review of the ALJ's decision which stands as the final decision of the
18 Commissioner. See 42 U.S.C. §§ 405(g), 1383(c).
19
20

21 STANDARD OF REVIEW

22 This Court reviews the Administration's decision to determine if
23 it is free of legal error and supported by substantial evidence. See
24 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
25

26 ² A Residual Functional Capacity is what a claimant can still do
27 despite existing exertional and nonexertional limitations. See 20
C.F.R. § 416.945(a)(1).

28 ³ "Light work involves lifting no more than 20 pounds at a time
with frequent lifting or carrying of objects weighing up to 10 pounds."
20 C.F.R. § 416.967(b).

1 evidence" is more than a mere scintilla, but less than a preponderance.
2 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine
3 whether substantial evidence supports a finding, "a court must consider
4 the record as a whole, weighing both evidence that supports and evidence
5 that detracts from the [Commissioner's] conclusion." Aukland v.
6 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation
7 omitted). As a result, "[i]f the evidence can support either affirming
8 or reversing the ALJ's conclusion, [a court] may not substitute [its]
9 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d
10 880, 882 (9th Cir. 2006).

11
12 **PLAINTIFF'S CONTENTION**

13
14 Plaintiff alleges that the ALJ erred in failing to properly
15 consider the opinion of licensed clinical social worker Marina Compean.
16 (See Joint Stip. at 4-6, 13).

17
18 **DISCUSSION**

19
20 After consideration of the record as a whole, the Court finds that
21 Plaintiff's sole claim of error warrants a remand for further
22 consideration.

23
24 **A. The ALJ Did Not Properly Consider Marina Compean's Opinion**

25
26 Plaintiff asserts that the ALJ did not provide a legally sufficient
27 reason for rejecting Marina Compean's opinion. (See Joint Stip. at 4-6,
28 13). Defendant asserts that the ALJ did not err in discounting Marina

1 Compean's opinion, and, alternatively, that any error by the ALJ in
2 failing to provide a legally sufficient reason for discounting Marina
3 Compean's opinion was harmless. (See Joint Stip. at 7-12).

4
5 An ALJ must take into account all medical opinions of record. 20
6 C.F.R. § 416.927(b). Only "acceptable medical sources" can give medical
7 opinions. 20 C.F.R. § 416.927(a)(1); Social Security Ruling 06-03p, *2
8 (rescinded for claims filed after March 27, 2017, 2017 WL 3928298). A
9 licensed clinical social worker is not an "acceptable medical source,"
10 but rather is an "other source." 20 C.F.R. § 416.913(d)(1); Social
11 Security Ruling 06-03, *2. The opinion of "other sources" cannot
12 establish the existence of a medically determinable impairment. 20
13 C.F.R. § 416.913(a); Social Security Ruling 06-03p, *2. However, the
14 opinion of "other sources" "are important and should be evaluated on key
15 issues such as impairment severity and functional effects, along with
16 the other relevant evidence in the file. Social Security Ruling 06-03p,
17 *3; see also 416.913(d)(1); Garrison v. Colvin, 759 F.3d 995, 1013-14
18 (9th Cir. 2014)("other sources" "can provide evidence about the severity
19 of a claimant's impairment(s) and how it affects the claimant's ability
20 to work")(citation and alterations omitted). The ALJ may discount the
21 testimony of "other sources" if the ALJ "gives reasons germane to each
22 witness for doing so." Ghanim v. Colvin, 763 F.3d 1154, 1161 (9th Cir.
23 2014)(citation and internal quotation marks omitted); see also Turner
24 v. Comm'r of Soc. Sec. Admin., 613 F.3d 1217, 1224 (9th Cir. 2010).

25
26 On December 30, 2015 (between the administrative hearings that were
27 held on July 21, 2015 and January 14, 2016), Plaintiff submitted a
28 Mental Capacity Assessment prepared by Marina Compean, LCSW on December
3, 2015. (See AR 640-43). Ms. Compean opined inter alia that

1 Plaintiff had (1) moderate limitations in the abilities to maintain
2 attention and concentration for extended periods, to sustain an ordinary
3 routine without special supervision, to complete a normal workday
4 without interruption from psychologically-based symptoms, and to
5 complete a normal workweek without interruptions from psychologically
6 based symptoms; (2) marked limitations in the abilities to perform
7 activities within a schedule, maintain regular attendance, and be
8 punctual within customary tolerances, and to perform at a consistent
9 pace with a standard number and length of rest periods; and (3) slight
10 limitations in the abilities to respond appropriately to changes in the
11 work setting and to be aware of normal hazards and take appropriate
12 precautions. (See AR 641-42).

13
14 At the January 14, 2016 administrative hearing, Plaintiff testified
15 that she had received therapy for depression from Ms. Compean, a
16 counselor at St. John's Well Child and Family Center who works under the
17 supervision of Dr. Rodriguez. (See AR 70-71).

18
19 The ALJ addressed Ms. Compean's opinion as follows: "Marin Compean,
20 LCSW, opined in December 2015 that the claimant had moderate to marked
21 limitations in certain aspects of sustained concentration and
22 persistence (Exhibit B19F/2-3). [¶] I accord little weight to Ms.
23 Compean's opinion because she is not an acceptable medical source." (AR
24 25).

25
26 The ALJ's reason for discounting Ms. Compean's opinion was
27 insufficient. See Haagenson v. Colvin, 656 Fed. Appx. 800 (9th Cir.
28 2016) ("The only reason that the ALJ offered for rejecting their opinions

1 is that they are not 'acceptable medical sources' within the meaning of
2 the federal regulation. However, the regulation already presumes that
3 nurses and counselors are non-acceptable medical sources, yet still
4 requires the ALJ to consider them as 'other sources.'")

5
6 Defendant alternatively contends that the ALJ's error in
7 discounting Ms. Compean's opinion was harmless because (1) the opinion
8 is not supported by any treatment notes, (2) the opinion is not
9 supported by the medical record, and (3) Plaintiff did not testify at
10 the hearings that she had issues with sustained concentration and
11 persistence, and Plaintiff did not allege in her disability reports that
12 she suffered a mental condition which limited her ability to work. (See
13 Joint Stip. at 9-12).

14
15 Contrary to Defendant's contention, the ALJ's failure to consider
16 Ms. Compean's opinion was not harmless error. It is not "clear from the
17 record . . . that [the ALJ's error] was "inconsequential to the ultimate
18 non-disability determination." Tommasetti v. Astrue, 533 F.3d 1035,
19 1038 (9th Cir. 2008)(citation omitted); see also Carmickle v.
20 Commissioner, 533 F.3d 1155, 1162 (9th Cir. 2008)("[T]he relevant
21 inquiry in this context is not whether the ALJ would have made a
22 different decision absent any error, . . ., it is whether the ALJ's
23 decision remains legally valid, despite such error."); Burch v.
24 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)("A decision of the ALJ will
25 not be reversed for errors that are harmless.").

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1 **B. Remand Is Warranted**

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3 The decision whether to remand for further proceedings or order an
4 immediate award of benefits is within the district court's discretion.
5 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
6 useful purpose would be served by further administrative proceedings,
7 or where the record has been fully developed, it is appropriate to
8 exercise this discretion to direct an immediate award of benefits. Id.
9 at 1179 ("[T]he decision of whether to remand for further proceedings
10 turns upon the likely utility of such proceedings."). However, where,
11 as here, the circumstances of the case suggest that further
12 administrative review could remedy the Commissioner's errors, remand is
13 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);
14 Harman v. Apfel, supra, 211 F.3d at 1179-81.

15
16 **ORDER**

17
18 For the foregoing reasons, the decision of the Commissioner is
19 reversed, and the matter is remanded for further proceedings pursuant
20 to Sentence 4 of 42 U.S.C. § 405(g).

21
22 LET JUDGMENT BE ENTERED ACCORDINGLY.

23
24 DATED: April 13, 2018

25
26 _____ /s/
27 ALKA SAGAR
28 UNITED STATES MAGISTRATE JUDGE