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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

LINDA CAROL MCKINNEY,	)	Case No. CV 17-09082-AS
	)	
Plaintiff,	)	<b>MEMORANDUM OPINION AND</b>
	)	
v.	)	<b>ORDER OF REMAND</b>
	)	
NANCY A. BERRYHILL,	)	
Acting Commissioner of the	)	
Social Security Administration,	)	
	)	
Defendant.	)	
_____	)	

**PROCEEDINGS**

On December 19, 2017, Plaintiff filed a Complaint seeking review of the denial of her application for Supplemental Security Income. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 11-12). On May 24, 2018, Defendant filed an Answer along with the Administrative Record ("AR"). (Docket Entry Nos. 18-19). The parties filed a Joint Stipulation ("Joint Stip.") on August 20, 2018, setting forth their

1 respective positions regarding Plaintiff's claims. (Docket Entry No. 20).

2  
3 The Court has taken this matter under submission without oral  
4 argument. See C.D. Cal. L.R. 7-15.

5  
6 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

7  
8 On February 11, 2014, Plaintiff, formerly employed as a hair  
9 weaver, care provider, security guard, supportive living instructor, and  
10 housekeeper (see AR 41-44, 206, 217-22), filed an application for  
11 Supplemental Security Income, alleging an inability to work because of  
12 a disabling condition since March 30, 2013. (See AR 22).<sup>1</sup> The  
13 Commissioner denied Plaintiff's application initially on March 21, 2014  
14 and on reconsideration on June 11, 2014 (see AR 116-19, 121-24).

15  
16 On July 21, 2016, the Administrative Law Judge ("ALJ"), John C.  
17 Tobin, heard testimony from Plaintiff, who was represented by counsel,  
18 and vocational expert Howard Goldfarb. (See AR 37-69). On August 31,  
19 2016, the ALJ issued a decision denying Plaintiff's application. (See  
20 AR 22-30). After determining that Plaintiff had the severe impairment  
21 of degenerative disc disease of the lumbar spine (AR 25)<sup>2</sup> 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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<sup>1</sup> The Administrative Record does not contain a copy of  
28 Plaintiff's application.

<sup>2</sup> The ALJ found that Plaintiff's other impairments -- depression  
and anxiety, singly and in combination -- were nonsevere. (AR 25-26).

1 found that Plaintiff had the residual functional capacity ("RFC")<sup>3</sup> to  
2 perform light work<sup>4</sup> with the following limitations: alternating sitting  
3 and standing every 30 minutes for a total of 4 hours sitting or  
4 standing; and climbing, balancing, stooping, kneeling, crouching and  
5 crawling occasionally. (AR 26-29). The ALJ then determined that  
6 Plaintiff was not able to perform any past relevant work (AR 29), but  
7 that jobs existed in significant numbers in the national economy that  
8 Plaintiff can perform, and therefore found that Plaintiff was not  
9 disabled within the meaning of the Social Security Act. (AR 29-30).

10  
11 Plaintiff requested that the Appeals Council review the ALJ's  
12 Decision. (See AR 168). The request was denied on October 27, 2017.  
13 (See AR 1-6). The ALJ's Decision then became the final decision of the  
14 Commissioner, allowing this Court to review the decision. See 42 U.S.C.  
15 §§ 405(g), 1383(c).

16  
17 **STANDARD OF REVIEW**

18  
19 This Court reviews the Administration's decision to determine if  
20 it is free of legal error and supported by substantial evidence. See  
21 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial  
22 evidence" is more than a mere scintilla, but less than a preponderance.  
23

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26 <sup>3</sup> A Residual Functional Capacity is what a claimant can still do  
27 despite existing exertional and nonexertional limitations. See 20  
28 C.F.R. § 416.945(a)(1).

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

10  
11 **PLAINTIFF'S CONTENTIONS**

12  
13 Plaintiff alleges that the ALJ erred in: (1) failing to properly  
14 evaluate the medical evidence in assessing Plaintiff's RFC; and (2)  
15 relying on the vocational expert's testimony to determine that a person  
16 with Plaintiff's characteristics and RFC could perform work in the  
17 national economy. (See Joint Stip. at 4-6, 9-14).

18  
19 **DISCUSSION**

20  
21 After consideration of the record as a whole, the Court finds that  
22 Plaintiff's first claim of error warrants a remand for further  
23 consideration. Since the Court is remanding the matter based on  
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<sup>5</sup> The harmless error rule applies to the review of  
28 administrative decisions regarding disability. See McLeod v. Astrue,  
640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676,  
679 (9th Cir. 2005)(An ALJ's decision will not be reversed for errors  
that are harmless).

1 Plaintiff's first claim of error, the Court will not address Plaintiff's  
2 second claim of error.

3  
4 **A. The ALJ Did Not Properly Assess Plaintiff's RFC**

5  
6 Plaintiff asserts that the ALJ did not properly assess Plaintiff's  
7 RFC because the RFC constituted "impermissible lay medical opinion" and  
8 "lack[ed] the support of substantial evidence." Plaintiff claims that  
9 in determining that Plaintiff had the RFC to perform light work, the ALJ  
10 "simply split the difference between" the opinion of Plaintiff's  
11 treating physician about Plaintiff's functional capacity (which the ALJ  
12 rejected) and the opinion of the State Agency Physicians (to which the  
13 accorded great weight). (See Joint Stip. at 4-6, 9-10). Defendant  
14 asserts that the ALJ properly evaluated the opinions of Plaintiff's  
15 treating physician and the State Agency Physicians in assessing  
16 Plaintiff's RFC. (See Joint Stip. at 6-9).

17  
18 An ALJ may not substitute his own interpretation of the medical  
19 evidence for the opinion of medical professionals. See Tackett v.  
20 Apfel, 180 F.3d 1094, 1102-03 (1999)("There is no medical evidence to  
21 support the ALJ's finding that [the claimant] could work through an  
22 eight hour workday with breaks every two hours."); Clifford v. Apfel,  
23 227 F.3d 863, 870 (7th Cir. 2000)("[A]n ALJ must not substitute his own  
24 judgment for a physician's opinion without relying on other medical  
25 evidence or authority in the record."); see also Day v. Weinberger, 522  
26 F.2d 1154, 1156 (9th Cir. 1975)(an ALJ who is not qualified as a medical  
27 expert cannot make "his own exploration and assessment as to [the]  
28 claimant's physical condition").

1 Jay W. Lee, M.D., treated Plaintiff from February 12, 2013 to  
2 February 24, 2014. (See AR 275-336).<sup>6</sup> In a Physical Residual  
3 Functional Capacity Questionnaire dated May 12, 2016, Dr. Lee diagnosed  
4 Plaintiff with chronic back pain, scoliosis of the thoracic spine and  
5 an abdominal wall hernia (recurrent), and opined that Plaintiff had the  
6 following functional limitations: cannot sit at any one time more than  
7 10 minutes or more than 2 hours total; cannot stand at any one time more  
8 than 15 minutes or 1 hour total; can sit, stand and/or walk less than  
9 2 hours out of an 8-hour workday; requires one unscheduled break per 2-  
10 hour period; can lift and/or carry 20 pounds rarely and 10 pounds or  
11 less occasionally; can twist, stoop, bend and climb stairs occasionally,  
12 but can never crouch or climb ladders; has mild limitations in  
13 repetitive reaching, handling or fingering; and is likely to be absent  
14 from work more than 4 days per month. (See AR 379-82).

15  
16 A State Agency Physician, B. Vaghaiwalla, M.D., prepared a report  
17 dated March 21, 2014. (See AR 98-105). Dr. Vaghaiwalla opined that  
18 Plaintiff had the following functional limitations: can lift and/or  
19 carry 50 pounds occasionally and 25 pounds frequently; can stand and/or  
20 walk (with normal breaks) about 6 hours in an 8-hour workday; can sit  
21 (with normal breaks) about 6 hours in an 8-hour workday; can push and/or  
22 pull on an unlimited basis; can stoop and crouch occasionally; and can  
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26 <sup>6</sup> In a letter dated July 30, 2014, Dr. Lee wrote the following:  
27 "I am writing to confirm that [Plaintiff] has chronic back pain due to  
28 scoliosis and degenerative joint disease of the spine confirmed by  
evaluation including x-ray and MRI. She has previously been referred for  
evaluation by a spine surgeon and has elected not to pursue surgery; her  
pain has been managed conservatively with medication and physical  
therapy." (AR 337).

1 climb ramps/stairs/ladders/ropes/scaffolds, balance, kneel and crawl on  
2 an unlimited basis. (See AR 102-03).

3  
4 A State Agency Physician, H. Han, M.D., prepared a report dated  
5 June 11, 2014. (See AR 107-114). Dr. Han opined that Plaintiff had the  
6 same functional limitations that Dr. Vaghaiwalla found. (See AR 111-  
7 12).<sup>7</sup>

8  
9 After discussing the opinions of Drs. Lee, Vaghaiwalla, and Han  
10 (see AR 28), the ALJ addressed their opinions as follows:

11  
12 The state agency medical opinions are given great weight, to  
13 the extent they are consistent with the record as a whole, as  
14 discussed above, which shows that the claimant is more functional  
15 than what she claimed. However, their residual functional  
16 capacity of the claimant is inconsistent with the objective  
17 evidence, e.g. showed L4-L5 moderate spinal stenosis with mild  
18 progression since the last exam, but no canal stenosis or  
19 foraminal compromise (Exhibit B7F pp. 91-95). Therefore, that  
20 portion of their opinion is given little weight. The opinion of  
21 Dr. Lee is inconsistent with objective evidence, symptom  
22 evaluation, and medical opinions as discussed above. In sum, the  
23 above residual functional capacity assessment is supported by  
24 clinical signs, diagnostic examination, medical opinions and  
25 evidence of the claimant's functional capacity (Exhibits 2A; B4A;

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27 <sup>7</sup> In essence, Drs. Vaghaiwalla opined that Plaintiff could  
28 perform medium work with some limitations. "Medium work involves  
lifting no more than 50 pounds at a time with frequent lifting or  
carrying of objects weighing up to 25 pounds." 20 C.F.R. § 416.967(c).

1 B7D; B9D; B5E; B1F pp. 5, 22-24, 29, 36; B4F p. 3; B5F p. 10; b7F  
2 pp. 2, 5, 21, 40, 42, 46, 57, 63, 70, 91-95).

3  
4 Contrary to Defendant's assertions (see Joint Stip. at 6-9),  
5 Plaintiff is not challenging the ALJ's decision to reject the opinion  
6 of Dr. Lee.<sup>8</sup> Rather, Plaintiff is claiming that the ALJ's determination  
7 about Plaintiff's RFC is not supported by substantial evidence. The  
8 Court finds this claim to have merit. Both Dr. Vaghwailla and Dr. Lee  
9 opined inter alia that Plaintiff can lift and/or carry 50 pounds  
10 occasionally and 25 pounds frequently, stand and/or walk (with normal  
11 breaks) about 6 hours in an 8-hour workday, sit (with normal breaks)  
12 about 6 hours in an 8-hour workday, and climb on an unlimited basis.  
13 (See AR 102-03, 111-12). However, Dr. Vaghwailla's and Dr. Lee's  
14 opinions do not support the ALJ's determination that Plaintiff has the  
15 RFC to lift less than 20 pounds and to lift or carry up to 10 pounds  
16 frequently, to alternately sit and stand every 30 minutes, to sit or  
17 stand 4 hours in an 8-hour workday, and to climb occasionally. However,  
18 the evidence the ALJ cited as purported support for his RFC  
19 determination (see AR 28-29) fails to support the ALJ's specified  
20 restrictions on lifting, carrying, alternating and total  
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22 <sup>8</sup> As a result, the Court need not determine whether the ALJ  
23 provided specific and legitimate reasons for rejecting the opinion of  
24 Dr. Lee. See Lester v. Chater, 81 F.3d at 821, 830 (9th Cir.  
25 1995)("Even if the treating doctor's opinion is contradicted by another  
26 doctor, the Commissioner may not reject this opinion without providing  
27 'specific and legitimate reasons' supported by substantial evidence in  
28 the record for doing so.")(citation omitted). The Court notes, however,  
that it is not clear which portions of Dr. Vaghaiwalla's and Dr. Lee's  
opinions the ALJ accorded great weight and little weight. See Thomas v.  
Barnhart, 278 F.3d 947, 957 (9th Cir. 2002)("The opinions of non-  
treating or non-examining physicians may also serve as substantial  
evidence when the opinions are consistent with independent clinical  
findings or other evidence in the record.").



1 sitting/standing, and climbing. Since the ALJ did not explain the basis  
2 for the specific restrictions assessed, the ALJ appears to have  
3 substituted his own interpretation of the medical evidence for the  
4 opinions of medical professionals.

5  
6 **B. Remand is Warranted**

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

20  
21 Since the ALJ failed to properly determine Plaintiff's RFC, remand  
22 is appropriate. Because outstanding issues must be resolved before a  
23 determination of disability can be made, and "when the record as a whole  
24 creates serious doubt as to whether the [Plaintiff] is, in fact,  
25 disabled within the meaning of the Social Security Act," further  
26 administrative proceedings would serve a useful purpose and remedy  
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1 defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.  
2 2014)(citations omitted).<sup>9</sup>

3  
4 **ORDER**

5  
6 For the foregoing reasons, the decision of the Commissioner is  
7 reversed, and the matter is remanded for further proceedings pursuant  
8 to Sentence 4 of 42 U.S.C. § 405(g).

9  
10 LET JUDGMENT BE ENTERED ACCORDINGLY.

11  
12 DATED: September 6, 2018.

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14 \_\_\_\_\_  
15 /s/  
16 ALKA SAGAR  
17 UNITED STATES MAGISTRATE JUDGE  
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23 \_\_\_\_\_  
24 <sup>9</sup> The Court has not reached any other issue raised by Plaintiff  
25 except to determine that reversal with a directive for the immediate  
26 payment of benefits would not be appropriate at this time.  
27 "[E]valuation of the record as a whole creates serious doubt that  
28 Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,  
1021 (2014). Accordingly, the Court declines to rule on Plaintiff's  
claim regarding the ALJ's error in relying on the vocational expert's  
testimony to determine that a person with Plaintiff's characteristics  
and RFC could perform work in the national economy (see Joint Stip. at  
9-14). Because this matter is being remanded for further consideration,  
this issue should also be considered on remand.