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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LETICIA T., <sup>1</sup>	)	Case No. CV 19-4629-JPR
	)	
Plaintiff,	)	
	)	MEMORANDUM DECISION AND ORDER
v.	)	REVERSING COMMISSIONER
	)	
ANDREW SAUL, Commissioner	)	
of Social Security, <sup>2</sup>	)	
	)	
Defendant.	)	

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**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner’s final decision denying her applications for disability insurance benefits (“DIB”) and Social Security supplemental security income benefits (“SSI”). The parties consented to the jurisdiction of the undersigned under 28 U.S.C. § 636(c). The matter is before the Court on the parties’ Joint Stipulation, filed March 10, 2020,

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<sup>1</sup> Plaintiff’s name is partially redacted in line with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

<sup>2</sup> Andrew Saul is substituted in as the correct Defendant. See Fed. R. Civ. P. 25(d).

1 which the Court has taken under submission without oral argument.  
2 For the reasons discussed below, the Commissioner's decision is  
3 reversed and this matter is remanded for further proceedings.

#### 4 **II. BACKGROUND**

5 Plaintiff was born in 1968. (Administrative Record ("AR")  
6 285.) She attended school in Mexico through third grade. (AR  
7 70.)<sup>3</sup> She worked as an assembler for an electronics company, a  
8 sewing-machine operator, a hand packager, and most recently a  
9 housekeeper. (AR 322, 341.) On March 9, 2015, she applied for  
10 benefits, alleging that she had been unable to work since March  
11 15, 2009, because of "swelling," "[n]umbness," "[p]lain,"  
12 "[t]ingling," and "[w]eakness" of the feet; fatigue; "[p]lain,"  
13 "[s]welling," "tingling," and "[a]rthritis" of the knees; pain of  
14 the "[s]houlders and [c]ollar"; pain and "numbness" of the hips;  
15 and "[m]ental[] depress[ion]" from weight gain caused by  
16 "[p]hysical [i]nactivity." (AR 321; see AR 285.) After her  
17 applications were denied (AR 148-55, 159-64, 166-71), she  
18 requested a hearing before an Administrative Law Judge (AR 173).  
19 She appeared before the ALJ on July 20, 2017, but the hearing was  
20 continued so that she could obtain counsel. (AR 46-64.) A  
21 hearing was held on January 2, 2018, at which Plaintiff,  
22 represented by counsel, testified, as did a vocational expert.  
23 (AR 65-87.) In a written decision issued March 14, 2018, the ALJ  
24 determined that Plaintiff was not disabled. (AR 27-38.) On  
25 March 22, 2019, the Appeals Council denied her request for

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27 <sup>3</sup> Plaintiff's Disability Report states that she completed  
28 eighth grade (AR 322), but she testified at a hearing that she  
went through third grade in Mexico (AR 70).

1 review. (AR 1-8.) This action followed.

2 **III. STANDARD OF REVIEW**

3 Under 42 U.S.C. § 405(g), a district court may review the  
4 Commissioner's decision to deny benefits. The ALJ's findings and  
5 decision should be upheld if they are free of legal error and  
6 supported by substantial evidence based on the record as a whole.  
7 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.  
8 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
9 means such evidence as a reasonable person might accept as  
10 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
11 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It  
12 is "more than a mere scintilla, but less than a preponderance."  
13 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
14 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). "[W]hatever the  
15 meaning of 'substantial' in other contexts, the threshold for  
16 such evidentiary sufficiency is not high." Biestek v. Berryhill,  
17 139 S. Ct. 1148, 1154 (2019). To determine whether substantial  
18 evidence supports a finding, the reviewing court "must review the  
19 administrative record as a whole, weighing both the evidence that  
20 supports and the evidence that detracts from the Commissioner's  
21 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
22 1998). "If the evidence can reasonably support either affirming  
23 or reversing," the reviewing court "may not substitute its  
24 judgment" for the Commissioner's. Id. at 720-21.

25 **IV. THE EVALUATION OF DISABILITY**

26 People are "disabled" for purposes of receiving Social  
27 Security benefits if they are unable to engage in any substantial  
28 gainful activity owing to a physical or mental impairment that is

1 expected to result in death or has lasted, or is expected to  
2 last, for a continuous period of at least 12 months. 42 U.S.C.  
3 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
4 1992).

5 A. The Five-Step Evaluation Process

6 An ALJ follows a five-step sequential evaluation process to  
7 assess whether someone is disabled. 20 C.F.R. §§ 404.1520(a)(4),  
8 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.  
9 1995) (as amended Apr. 9, 1996). In the first step, the  
10 Commissioner must determine whether the claimant is currently  
11 engaged in substantial gainful activity; if so, the claimant is  
12 not disabled and the claim must be denied. §§ 404.1520(a)(4)(i),  
13 416.920(a)(4)(i).

14 If the claimant is not engaged in substantial gainful  
15 activity, the second step requires the Commissioner to determine  
16 whether the claimant has a "severe" impairment or combination of  
17 impairments significantly limiting her ability to do basic work  
18 activities; if not, a finding of not disabled is made and the  
19 claim must be denied. §§ 404.1520(a)(4)(ii) & (c),  
20 416.920(a)(4)(ii) & (c).

21 If the claimant has a "severe" impairment or combination of  
22 impairments, the third step requires the Commissioner to  
23 determine whether the impairment or combination of impairments  
24 meets or equals an impairment in the Listing of Impairments  
25 ("Listing") set forth at 20 C.F.R., part 404, subpart P, appendix  
26 1; if so, disability is conclusively presumed and benefits are  
27 awarded. §§ 404.1520(a)(4)(iii) & (d), 416.920(a)(4)(iii) & (d).

1 If the claimant's impairment or combination of impairments  
2 does not meet or equal one in the Listing, the fourth step  
3 requires the Commissioner to determine whether the claimant has  
4 sufficient residual functional capacity ("RFC")<sup>4</sup> to perform her  
5 past work; if so, she is not disabled and the claim must be  
6 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant  
7 has the burden of proving she is unable to perform past relevant  
8 work. Drouin, 966 F.2d at 1257. If the claimant meets that  
9 burden, a prima facie case of disability is established. Id.

10 If that happens or if the claimant has no past relevant  
11 work, the Commissioner bears the burden of establishing that the  
12 claimant is not disabled because she can perform other  
13 substantial gainful work available in the national economy, the  
14 fifth and final step of the sequential analysis.

15 §§ 404.1520(a)(4)(v), 404.1560(b), 416.920(a)(4)(v), 416.960(b).

16 B. The ALJ's Application of the Five-Step Process

17 At step one, the ALJ found that Plaintiff had not engaged in  
18 substantial gainful activity since March 15, 2009, the alleged  
19 onset date. (AR 30.) Her date last insured was December 31,  
20 2015. (Id.) At step two, she determined that Plaintiff had  
21 severe impairments of "osteoarthritis of the joints,"  
22 "degenerative disc disease of the lumbar spine," "degenerative  
23 disc disease of the cervical spine," and "obesity." (Id.) She

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24  
25 <sup>4</sup> RFC is what a claimant can do despite existing exertional  
26 and nonexertional limitations. §§ 404.1545(a)(1), 416.945(a)(1);  
27 see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).  
28 The Commissioner assesses the claimant's RFC between steps three  
and four. Laborin v. Berryhill, 867 F.3d 1151, 1153 (9th Cir.  
2017) (citing § 416.920(a)(4)).

1 concluded that Plaintiff's plantar fasciitis was not severe  
2 because it did "not cause a significant limitation in [her]  
3 ability to perform basic work activities." (Id.)

4 At step three, she found that Plaintiff's impairments did  
5 not meet or equal any of the impairments in the Listing. (AR  
6 32.) At step four, she determined that Plaintiff had the RFC to  
7 perform medium work except that she could "frequently climb  
8 ladders, ropes, and scaffolds, and balance and stoop,"  
9 "occasionally climb ramps and stairs, and kneel, crouch, and  
10 crawl," and "frequently perform bilateral overhead reaching."  
11 (AR 33-34.) The ALJ found Plaintiff capable of performing her  
12 past relevant work as a hand packager and housekeeper. (AR 37-  
13 38.) Accordingly, she found her not disabled. (AR 38.)

#### 14 **V. DISCUSSION<sup>5</sup>**

15 Plaintiff alleges that the ALJ erred in determining her  
16 severe impairments, evaluating the opinion evidence, and  
17 assessing her symptom statements. (See J. Stip. at 3-12, 16-28,  
18 30-35, 38-39.) Because the ALJ erred in the first and second  
19 respects, the matter must be remanded for further analysis and  
20 findings.

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23 <sup>5</sup> In Lucia v. SEC, 138 S. Ct. 2044, 2055 (2018), the Supreme  
24 Court held that ALJs of the Securities and Exchange Commission  
25 are "Officers of the United States" and thus subject to the  
26 Appointments Clause. To the extent Lucia applies to Social  
27 Security ALJs, Plaintiff has forfeited the issue by failing to  
28 raise it during her administrative proceedings. (See AR 10, 46-  
87, 158, 279-80); Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir.  
1999) (as amended); see also Kabani & Co. v. SEC, 733 F. App'x  
918, 919 (9th Cir. 2018) (rejecting Lucia challenge because  
plaintiff did not raise it during administrative proceedings),  
cert. denied, 139 S. Ct. 2013 (2019).

1           A.    The ALJ Erred in Assessing Plaintiff's Alleged Foot  
2                    Impairment

3                    1.    Dr. Mooney

4                            a.    *Applicable law*

5                    "Acceptable medical sources" under the Social Security  
6 regulations include only licensed physicians, psychologists,  
7 optometrists, podiatrists, and speech pathologists.

8 §§ 404.1513(a), 416.913(a).<sup>6</sup> Chiropractors are treated as "other  
9 sources," see §§ 404.1513(d)(1), 416.913(d)(1); see also SSR 06-  
10 03p, 2006 WL 2329939, at \*1 (Aug. 9, 2006), and an ALJ may reject  
11 opinions from an "other source" only by giving "reasons germane  
12 to each witness for doing so." Popa v. Berryhill, 872 F.3d 901,  
13 906 (9th Cir. 2017) (as amended) (quoting Molina v. Astrue, 674  
14 F.3d 1104, 1111 (9th Cir. 2012)). If an ALJ errs by rejecting an  
15 opinion from an "other source" without providing a germane  
16 reason, that error is harmless if the Court can "conclude from  
17 the record that the ALJ would have reached the same result absent  
18 the error." Molina, 674 F.3d at 1115; Marsh v. Colvin, 792 F.3d  
19 1170, 1173 (9th Cir. 2015).

20                            b.    *Relevant background*

21                    Plaintiff apparently suffered cumulative work-related  
22 impairment between May 2008 and March 2009, when she worked as a  
23 housekeeper at a hotel. (AR 341-42, 568.) Dr. Andrew Mooney, a  
24 chiropractor, evaluated and treated her as part of her worker's-

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26                    <sup>6</sup> For claims filed on or after March 27, 2017, the rules in  
27 §§ 404.1502 and 416.902 (not §§ 404.1513 and 416.913) apply.  
28 Plaintiff's claims were filed before March 27, 2017, however, and  
thus the new regulations do not apply.

1 compensation claim. (AR 773-831.) On July 7, 2016, Dr. Mooney  
2 completed a "Primary Treating Physician's Re-Evaluation Report  
3 and Request For Authorization." (AR 773-800.) He examined  
4 Plaintiff's shoulders, elbows, wrists, thoracic spine, lumbar  
5 spine, hips, knees, ankles, and feet. (AR 774-79.) He noted  
6 that she walked with a "slow, guarded gate [sic] pattern without  
7 a limp" and that she was "unable to heel-toe walk or perform a  
8 full squat due to a complaint of lumbar spine and bilateral foot  
9 pain." (AR 776.) The "Straight Leg Raise Supine" test,<sup>7</sup>  
10 "Standing Kemp's Test,"<sup>8</sup> and "Patrick-Fabere's Test"<sup>9</sup> were  
11 positive on both sides. (Id.) The ankle examination revealed a  
12 left hallux valgus<sup>10</sup> and palpable tenderness of the bilateral  
13 calcaneus and plantar fascia. (AR 778.) Dr. Mooney reviewed  
14 MRIs of her lumbar spine, cervical spine, and feet as well as a

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16 <sup>7</sup> A straight-leg-raise test involves mechanical manipulation  
17 of the legs, stressing the neurological tissues in the spine;  
18 specific symptoms reported at different degrees of flexion can  
19 indicate nerve compression. See The Pain Clinic Manual 44-45  
20 (Stephen E. Abram & J. David Haddox eds., 2d ed. 2000).

21 <sup>8</sup> The Kemp test assesses the lumbar-spine facet joints to  
22 detect pain. See Kemp test, Physiopedia, [https://](https://www.physio-pedia.com/KEMP_test)  
23 [www.physio-pedia.com/KEMP\\_test](https://www.physio-pedia.com/KEMP_test) (last visited Aug. 25, 2020).

24 <sup>9</sup> The Patrick, or Fabere, test measures pain or dysfunction  
25 in the hip and sacroiliac joints. Patrick Test, The Free  
26 Dictionary, [http://medical-dictionary.thefreedictionary.com/](http://medical-dictionary.thefreedictionary.com/Patrick+test)  
27 [Patrick+test](http://medical-dictionary.thefreedictionary.com/Patrick+test) (last visited Aug. 25, 2020).

28 <sup>10</sup> Hallux valgus is a condition in which the big toe is bent  
toward the midline of the foot so that it overlaps the second  
toe. See Medical Definition of Hallux Valgus, MedicineNet,  
<https://www.medicinenet.com/script/main/art.asp?articlekey=6406>  
(last visited Aug. 25, 2020). It may be accompanied by a bunion  
and is frequently associated with inflammation. Id. It can be  
related to inflammation of the nearby bursa or degenerative joint  
disease. Id.



1 study of her upper limbs. (AR 779.) He also reviewed records  
2 from the agreed medical examiners, a gastroenterologist, and  
3 Plaintiff's treating podiatrist, Dr. Victoria Foley. (AR 780-  
4 90.) Based on his physical examination and review of her  
5 diagnostic studies and records, Dr. Mooney found "[c]ervical  
6 [s]pine [s]train/[s]prain with [m]yalgia" and "[d]isc  
7 [d]isplacement"; "[l]eft [u]lnar [n]europathy"; bilateral carpal  
8 tunnel syndrome; "[l]umbar [s]pine [s]train/[s]prain with  
9 [m]yalgia," "[d]isc [d]isplacement," and "[r]adiculitis";  
10 bilateral plantar fasciitis; "[r]ule [o]ut" "[c]alcaneal [s]pur"  
11 on both feet; "[l]eft [h]allux [v]aligus"; and "reported"  
12 depression and anxiety, sleep disturbance, gastritis, and  
13 "[s]exual [d]ysfunction." (AR 790.) He opined that she was  
14 temporarily totally disabled ("TTD") from July 7 through August  
15 21, 2016, and had not "reached [m]axim[um m]edical [i]mprovement"  
16 ("MMI"). (AR 792.) He examined her again on August 11, 2016,  
17 noting the same diagnoses as those in his July report. (AR 821.)  
18 He opined that she had not reached MMI and that she was TTD from  
19 August 11 through September 25, 2016. (AR 823.)

20 *c. Analysis*

21 The ALJ summarized some of Plaintiff's treatment records and  
22 the opinion of internist Dr. Seung Ha Lim, the consultative  
23 examiner. (AR 34-35.) Dr. Lim opined that Plaintiff was  
24 restricted to

25 standing and/or walking about 6 hours in an eight-hour  
26 workday with appropriate breaks. [She can] sit for 6  
27 hours in an eight-hour day with appropriate breaks. [She  
28 can] lift and/or carry 50 pounds occasionally and 25

1 pounds frequently. Pushing, pulling, and overhead  
2 reaching is unlimited other than as shown for lifting  
3 and/or carrying. [She] has no other impairment related  
4 physical limitations.

5 (AR 726.) The ALJ gave "great weight" to Dr. Lim's opinion,  
6 finding that it was "consistent with the record as a whole." (AR  
7 34.)

8 To reject Dr. Mooney's opinion, the ALJ had to give only a  
9 germane reason; she failed to do so because she failed to address  
10 the opinion at all. A chiropractor is not an acceptable medical  
11 source. See §§ 404.1513(d)(1), 416.913(d)(1); see also SSR 06-  
12 03p, 2006 WL 2329939, at \*2. That is not a sufficient reason,  
13 however, to reject his opinion. See Haagenson v. Colvin, 656 F.  
14 App'x 800, 802 (9th Cir. 2016) (finding that ALJ failed to  
15 provide germane reason for rejecting opinion of claimant's nurse  
16 and counselor because "[t]he only reason that the ALJ offered for  
17 rejecting their opinions is that they are not 'acceptable medical  
18 sources' within the meaning of the federal regulation").

19 And although inconsistency with other objective evidence can  
20 be a germane reason to reject other-source evidence, see Molina,  
21 674 F.3d at 1111-12, and Dr. Lim's opinion was generally at odds  
22 with Dr. Mooney's assessment, the ALJ did not cite that  
23 inconsistency as a reason for ignoring or rejecting Dr. Mooney's  
24 opinion. Indeed, the ALJ did not cite any specific  
25 inconsistencies between the two doctors' opinions or between Dr.  
26 Mooney's opinion and any other medical-opinion evidence. See  
27 Nguyen v. Berryhill, No. 3:16-cv-01665-LB, 2017 WL 1196800, at  
28 \*15 (N.D. Cal. Mar. 31, 2017) (finding ALJ's reason for rejecting

1 other-source opinion "insufficient" because ALJ failed to "cite  
2 specific inconsistencies" with objective evidence); see also  
3 Bruce v. Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009) (reasons for  
4 rejecting other-source testimony must be "germane" and "specific"  
5 (citation omitted)).

6 Moreover, the error was not harmless. Dr. Mooney found that  
7 Plaintiff had a "slow, guarded gate [sic] pattern" and was  
8 "unable to heel-toe walk or perform a full squat." (AR 776,  
9 807.) He concluded that she was TTD for more than two months,  
10 until he stopped treating her. (AR 792, 823.) The ALJ  
11 specifically found that Plaintiff "consistently showed no  
12 restrictions in ambulation" and that "nothing in the record  
13 show[ed] that [her] plantar fasciitis . . . ha[d] any effect on  
14 her functioning" (AR 30), apparently ignoring Dr. Mooney's  
15 diagnoses (see AR 790, 821). Further, Dr. Mooney's opinion was  
16 consistent with that of Dr. Foley, discussed more fully below.  
17 The two jobs the ALJ found Plaintiff could perform, hand packager  
18 and housekeeper, are both medium exertional work,<sup>11</sup> which  
19 requires "standing or walking, off and on, for a total of  
20 approximately 6 hours in an 8-hour workday." SSR 83-10, 1983 WL  
21 31251, at \*6 (Jan. 1, 1983). Thus, the Court cannot "conclude  
22 from the record that the ALJ would have reached the same result  
23 absent the error." Molina, 674 F.3d at 1115.

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25 <sup>11</sup> Housekeeper is light work as generally performed, but the  
26 VE testified that it was medium work as Plaintiff performed it.  
27 (AR 84.) Even when performed as light work, the DOT description  
28 of its duties demonstrates that it involves a good deal of  
walking or standing. See Cleaner, Housekeeping, DOT 323.687-014,  
1991 WL 672783 (Jan. 1, 2016).

1 Because the ALJ failed to assign any particular weight to  
2 Dr. Mooney's opinion or provide a germane reason for rejecting  
3 it, remand is warranted.

4 2. Dr. Foley

5 a. *Applicable law*

6 In evaluating doctors' opinions, an ALJ must state what  
7 weight she has given each opinion and explain why. See SSR  
8 96-2p, 1996 WL 374188, at \*5 (July 2, 1996); §§ 404.1527(e),  
9 416.927(e).<sup>12</sup> An ALJ errs when she "does not explicitly reject a  
10 medical opinion or set forth specific, legitimate reasons for  
11 crediting one medical opinion over another." Garrison v. Colvin,  
12 759 F.3d 995, 1012 (9th Cir. 2014).

13 b. *Relevant background*

14 Dr. Foley treated Plaintiff as part of her worker's-  
15 compensation claim. (AR 540-72.) On February 9, 2011, she  
16 examined Plaintiff and completed a "Primary Treating Physician's  
17 Initial Report." (AR 568-74.) Plaintiff complained of "+9/10"  
18 "stabbing" "right heel" pain when "walking or standing" and "left  
19 foot" pain "in the bunion area." (AR 568.) Dr. Foley noted that  
20 she "ambulated with [a] limp," but she was able to "gait[] onto  
21 and off of the examination table without difficulty." (AR 570.)  
22 Her motor strength was "+5/5" "bilaterally to all muscles."  
23 (Id.) An ankle examination revealed "absolute tenderness with  
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25 <sup>12</sup> For claims filed on or after March 27, 2017, the rules in  
26 §§ 404.1520c and 416.920c (not §§ 404.1527 and 416.927) apply.  
27 See §§ 404.1520c, 416.920c (evaluating opinion evidence for  
28 claims filed on or after Mar. 27, 2017). Plaintiff's claims were  
filed before March 27, 2017, however, and thus the new  
regulations do not apply.

1 palpation, range of motion, dorsiflexion, plantar flexion,  
2 eversion, and inversion." (Id.) During a heel examination  
3 Plaintiff exhibited "severe pain with palpation of the calcaneus  
4 with lateral compression" and "pain with palpation of the  
5 insertion of the plantar fascia plantarly to the plantar medial  
6 tubercle of the calcaneus, right greater than left." (Id.) Dr.  
7 Foley noted that Plaintiff had an "abducted gait," a "short  
8 stride and an antalgic gait." (AR 571.) X-rays revealed a  
9 "large plantar calcaneal spur on the right," a "small calcaneal  
10 spur on the left," "a bunion deformity on the left first  
11 metatarsophalangeal joint," and "decreased joint space on the  
12 lateral aspect of the left first metatarsophalangeal joint."  
13 (Id.) She assessed "[c]alcaneal stress fracture on the right,"  
14 "[p]lantar fasciitis bilaterally," and "[b]union on the left."  
15 (AR 572.) She recommended that Plaintiff get an MRI for the  
16 plantar fasciitis and calcaneal stress fracture. (Id.)

17 On April 4, 2011, Dr. Foley noted that the MRI report showed  
18 "moderately advanced" "reactive changes to the plantar fascia,"  
19 "[e]dema in the plantar fat pad," "posterior tibialis  
20 peritendinitis, chronic tendinopathy, . . . mild intrasubstance  
21 partial tearing distally . . . without rupture," and "synovitis  
22 and arthritis of the first metatarsophalangeal joint on the right  
23 side." (AR 566.) She assessed "[p]lantar fasciitis, right  
24 side," "[p]ain," and "[d]ifficult walking." (AR 567.) She  
25 dispensed a "Cam walker"<sup>13</sup> and "told [Plaintiff] to wear [it] at  
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27 <sup>13</sup> A CAM walker is a removable, inflatable cast. See  
28 Medical Boot, OrthoTape, [http://orthotape.com/cam\\_walkers.asp](http://orthotape.com/cam_walkers.asp)

(continued...)

1 all times except when . . . taking a shower." (Id.) On April  
2 25, 2011, Dr. Foley recommended that Plaintiff "get a fiberglass  
3 cast, so that she [would] be totally immobilized," and  
4 "[d]iscussed possible surgical intervention." (AR 564.)  
5 Plaintiff stated during a September 26, 2011, visit that she  
6 "previously . . . had taken Vicodin<sup>14</sup> and . . . ha[d] been  
7 alternating between Vicodin and Motrin two to three times a  
8 week." (AR 561.) Dr. Foley again discussed a "fiberglass cast"  
9 and "cortisone injections." (AR 562.)

10 On October 4, 2011, Dr. Foley gave Plaintiff a cortisone  
11 injection. (AR 560.) Plaintiff reported on November 8, 2011,  
12 that she was a "little bit better after the injection." (AR  
13 557.) Dr. Foley gave her "a second cortisone injection." (AR  
14 558.) On December 12, 2011, the "injection [had] helped a little  
15 bit." (AR 555.) Plaintiff was "wearing the Cam walker six hours  
16 daily" and was having "constant pain," but the "strong stabbing  
17 pain [was] less." (Id.)

18 Dr. Foley discussed with Plaintiff during a January 17, 2012  
19 visit that she had "had the pain in the right foot for almost two  
20 years" and told her "that at this point [s]he would recommend  
21 foot surgery." (AR 554.) Plaintiff told Dr. Foley on March 20,  
22 2012, that "she stands and walks approximately four hours total  
23 daily for 30 to 40 minutes at a time." (AR 550.) She rated her

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24  
25 <sup>13</sup> (...continued)  
(last visited Aug. 25, 2020).

26 <sup>14</sup> Vicodin is an opioid pain reliever used to relieve  
27 moderate to severe pain. See Vicodin, WebMD, <https://www.webmd.com/drugs/2/drug-3459/vicodin-oral/details> (last  
28 visited Aug. 25, 2020).

1 pain in the morning as "9/10" and "8/10" "after she warms up."  
2 (Id.) Plaintiff "refused surgery" and "the fiberglass cast."  
3 (Id.) Dr. Foley recommended that she get a pair of orthotics.  
4 (AR 551.) Further, she opined that Plaintiff had been TTD for  
5 more than a year but could "return to work as of March 20, 2012."  
6 (AR 552.) Plaintiff saw Dr. Foley for orthotic casting on April  
7 30, 2012. (AR 546.) She assessed "[p]lantar fasciitis,"  
8 "[c]lapsulitis," "[b]ursitis," and "[a]bnormal gait." (Id.) She  
9 dispensed the orthotics on May 21, 2012. (AR 544.) Plaintiff  
10 reported on June 4, 2012, that her orthotics were "very  
11 comfortable but she d[id] not have any diminishing pain." (AR  
12 542.) Dr. Foley again assessed an "[a]bnormal gait." (Id.) On  
13 July 2, 2012, Plaintiff reported that her pain was still "7/10,"  
14 and Dr. Foley gave her a cortisone injection "into the right  
15 foot." (AR 540.) On July 31, 2012, she noted that Plaintiff had  
16 refused "to have surgery," "was walk[ing] . . . without any  
17 limp," "ha[d] reached her maximum medical benefit," and had "no  
18 permanent impairment." (AR 548-49.)

19 *c. Analysis*

20 The ALJ found that Plaintiff had "bilateral plantar  
21 fasciitis" that was not severe. (AR 30.) But she apparently  
22 based this finding at least in part on her inaccurate conclusions  
23 that Plaintiff "consistently showed no restrictions in  
24 ambulation" and "there is nothing in the record to show that the  
25 claimant's plantar fasciitis . . . ha[d] any effect on her  
26  
27  
28

1 functioning."<sup>15</sup> (AR 30.) She did not assign any particular  
2 weight to Dr. Foley's opinions that Plaintiff had "difficult[y]  
3 walking," had an "abnormal gait," and was TTD from February 9,  
4 2011, to March 20, 2012; indeed, she never discussed or even  
5 mentioned them. By failing to even mention a treating doctor's  
6 opinions, the ALJ erred. Garrison, 759 F.3d at 1012; see also  
7 Marsh, 792 F.3d at 1172-73 (finding error when ALJ gave no reason  
8 for not mentioning treating doctor or his notes); Jose Luis V.H.  
9 v. Saul, No. EDCV 18-2618-KS, 2020 WL 247315, at \*4-5 (C.D. Cal.  
10 Jan. 16, 2020) (finding reversible error when ALJ failed to  
11 mention doctor's opinion or give opinion any weight).

12 Moreover, the error was not harmless because the medium-work  
13 jobs identified by the ALJ that Plaintiff could perform require  
14 standing or walking, off and on, for a total of approximately six  
15 hours in an eight-hour workday. See SSR 83-10, 1983 WL 31251, at  
16 \*6. Defendant argues that the error was harmless because Dr.  
17 Foley's opinions were all rendered before the period during which  
18 Plaintiff would have been eligible to actually receive benefits.  
19 (See J. Stip. at 14.) But in light of Dr. Mooney's (and Dr.  
20 Halperin's; see below) later similar statements, which the ALJ  
21 also ignored, Dr. Foley's opinions could have led to a reasonable  
22 inference that Plaintiff was afflicted with severe plantar

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24 <sup>15</sup> The ALJ also incorrectly stated that Plaintiff "was never  
25 prescribed narcotic or other medications ordinarily used for  
26 severe pain and discomfort" and that "there is no evidence of  
27 [Plaintiff] receiving physical therapy [or] pain relief  
28 injections." (AR 36.) Plaintiff was prescribed narcotics,  
including Vicodin, Norco, and Tramadol. (See, e.g., AR 561, 641,  
679.) Further, she underwent physical therapy and received  
cortisone injections. (See, e.g., AR 558, 560, 600.)



1 fasciitis throughout the relevant period. Therefore, the Court  
2 cannot conclude from the current record that the ALJ would have  
3 reached the same result absent the error.

4 3. Dr. Halperin

5 a. *Relevant background*

6 Podiatrist Gabriel Halperin treated Plaintiff as part of her  
7 worker's-compensation claim. (AR 579-600.) On October 28, 2013,  
8 he examined her and completed a "Comprehensive Initial Podiatric  
9 Consultation" report. (AR 579-91.) He noted that she "walk[ed]  
10 without [a] limp" (AR 585), but she exhibited "pain on palpation  
11 over the rim of the heel with tingling neuritic pain" and had a  
12 "positive Tinel's sign<sup>16</sup> at the common peroneal, deep peroneal,  
13 posterior tibial and medial calcaneal nerves" (AR 587-88). He  
14 diagnosed plantar fasciitis, "[c]alcaneal enthesopathy,"<sup>17</sup>  
15 "[c]hronic pain," "[p]eripheral nerve impairment," and  
16 "[n]euritis with heel pain of the sural nerve, posterior tibial  
17 nerve[,] and the lateral plantar nerve." (AR 588.) He  
18 recommended orthotics, "four steroid injections," a "[h]eel lift  
19 to reduce traction to the calcaneus," a "[n]ight splint," and  
20 pain medication. (AR 589.)

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21  
22 <sup>16</sup> Tinel's sign is positive when tapping the affected nerve  
23 produces tingling. See Tinel's Sign, Healthline,  
24 <https://www.healthline.com/health/tinels-sign#test> (last visited  
Aug. 25, 2020).

25 <sup>17</sup> Enthesopathy is inflammation of the site of attachment or  
26 insertion of ligaments, tendons, fascia, or articular capsule  
27 into bone and may be caused by chronic traction of the Achilles  
28 tendon on the calcaneus. See Achilles and plantar fascia  
enthesopathy, Radiopaedia, [https://radiopaedia.org/cases/  
achilles-and-plantar-fascia-enthesopathy?lang=us](https://radiopaedia.org/cases/achilles-and-plantar-fascia-enthesopathy?lang=us) (last visited  
Aug. 25, 2020).

1 Dr. Halperin stated in a March 3, 2014 progress report that  
2 Plaintiff's "[p]lain ha[d] increased," "[l]eft foot . . . greater  
3 than right," and that she was "complaining of knee pain." (AR  
4 593.) She reported to him on April 14, 2014, that she had "not  
5 improved significantly." (AR 595.) He noted that he would delay  
6 "steroid injections until May." (Id.) On May 14, 2014,  
7 Plaintiff reported "improved pain with trigger injection[s]  
8 initially." (AR 596.) Dr. Halperin again noted "[p]lain on  
9 palpation" of Plaintiff's feet on May 28, July 9, and August 13,  
10 2014. (AR 597-99.) After "[two] sessions [of physical therapy,  
11 Plaintiff] noted decreased pain." (AR 600.)

12 *b. Analysis*

13 Dr. Halperin diagnosed Plaintiff with plantar fasciitis and  
14 several other conditions. Other than noting Plaintiff's own  
15 subjective statements of symptoms, however, he did not document  
16 or provide any opinion regarding any functional limitations. But  
17 given that some of the ALJ's statements concerning the record  
18 clearly failed to take into account any of the treatment notes or  
19 opinions from the doctors who treated Plaintiff's feet (see supra  
20 sec. V.A.1.c & .2.c), her error in failing to discuss Dr.  
21 Halperin was not harmless. See Marsh, 792 F.3d at 1173 (ALJ's  
22 failure to discuss treating doctor's opinion was not harmless  
23 when ALJ did not mention doctor's statement that condition  
24 rendered plaintiff "pretty much nonfunctional").

25 B. Clinica de Salud Familiar

26 Plaintiff also argues that the ALJ "failed to provide proper  
27 discussion and consideration" of her treatment with Clinica de  
28 Salud Familiar. (J. Stip. at 23; see id. at 22.) The ALJ

1 discussed these records. (See AR 35.)

2 As the ALJ noted, although the records documented  
3 Plaintiff's subjective complaints and treatment for shoulder and  
4 knee pain (AR 733-71, 841-57), they did not show any diagnostic  
5 test results or opinions suggesting that she had limitations  
6 greater than those in the RFC. (AR 35.) In any event, the ALJ  
7 can reconsider them on remand in light of the complete record.

8 C. Remaining Issues

9 Plaintiff asserts that the ALJ erred in evaluating her  
10 testimony and statements regarding her symptoms. (J. Stip. at  
11 32-35, 38-39.) The ALJ should reevaluate Plaintiff's symptom  
12 testimony and statements once she has properly considered the  
13 treating doctors' opinions, so the Court does not address those  
14 arguments. See Negrette v. Astrue, No. EDCV 08-0737 RNB., 2009  
15 WL 2208088, at \*2 (C.D. Cal. July 21, 2009) (finding it  
16 unnecessary to address further disputed issues when court found  
17 that ALJ failed to properly consider treating doctor's opinion  
18 and lay-witness testimony).

19 **VI. CONCLUSION**

20 Consistent with the foregoing and under sentence four of 42  
21 U.S.C. § 405(g), IT IS ORDERED that judgment be entered REVERSING  
22 the Commissioner's decision, GRANTING Plaintiff's request for  
23 remand, and REMANDING this action for further proceedings  
24 consistent with this Memorandum Decision.

25  
26 DATED: August 26, 2020

  
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JEAN ROSENBLUTH  
U.S. Magistrate Judge