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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JENNIFER ANN C., ¹)	Case No. EDCV 19-2449-JPR
)	
Plaintiff,)	MEMORANDUM DECISION AND ORDER
v.)	REVERSING COMMISSIONER
)	
ANDREW SAUL, Commissioner)	
of Social Security,)	
)	
Defendant.)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision terminating her Social Security disability insurance benefits (“DIB”). The matter is before the Court on the parties’ Joint Stipulation, filed August 13, 2020, which the Court has taken under submission without oral argument. For the reasons discussed below, the Commissioner’s decision is reversed and this matter is remanded for further proceedings.

¹ 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.

1 **II. BACKGROUND**

2 Plaintiff was born in 1978. (Administrative Record ("AR")
3 201.) She has a master's degree (AR 64) and worked as an
4 executive director of a nonprofit organization (AR 84-85).

5 On November 25, 2008, Plaintiff applied for DIB, alleging
6 that she had been unable to work since July 31, 2007. (AR 201.)
7 In a determination dated May 21, 2009, she was found disabled
8 beginning on July 31, 2007. (AR 40, 53, 112.)

9 On March 24, 2016, Plaintiff filed a Continuing Disability
10 Review Report, alleging that she remained disabled because of
11 fibromyalgia, chronic fatigue syndrome, and chronic inflammatory
12 response syndrome, or "CIRS." (AR 219.) On June 9, 2016, her
13 disability was found to have ended on June 1 of that year,
14 terminating her benefits. (AR 109, 118-21.) She requested
15 reconsideration of the cessation determination. (AR 122-23.) On
16 March 6, 2017, a hearing was held before a disability hearing
17 officer (AR 127-35), who upheld the cessation determination in a
18 decision dated May 15, 2017 (AR 110, 136-49).

19 Plaintiff requested a hearing before an Administrative Law
20 Judge. (AR 153, 295-98.) One was held on July 24, 2018, at
21 which Plaintiff, who was represented by counsel, testified, as
22 did a vocational expert. (See AR 59-91.) In a written decision
23 issued November 9, 2018, the ALJ found that Plaintiff's
24 disability had ended on June 1, 2016. (AR 37-58.) She sought
25 Appeals Council review (AR 197-200, 300-09), which was denied on
26 October 21, 2019 (AR 1-7). This action followed.

27 **III. STANDARD OF REVIEW**

28 Under 42 U.S.C. § 405(g), a district court may review the

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

22 **IV. THE EVALUATION OF DISABILITY**

23 People are "disabled" for Social Security purposes if they
24 are unable to engage in any substantial gainful activity owing to
25 a physical or mental impairment that is expected to result in
26 death or has lasted, or is expected to last, for a continuous
27 period of at least 12 months. 42 U.S.C. § 423(d)(1)(A); Drouin
28 v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992).

1 A. The Eight-Step Evaluation Process

2 The ALJ follows an eight-step sequential evaluation process
3 to assess whether a recipient continues to be disabled. 20
4 C.F.R. § 404.1594(f); see also Nathan v. Colvin, 551 F. App'x
5 404, 407 (9th Cir. 2014); Held v. Colvin, 82 F. Supp. 3d 1033,
6 1037 (N.D. Cal. 2015). In the first step, the Commissioner must
7 determine whether the recipient is currently engaged in
8 substantial gainful activity; if so, she is no longer disabled.
9 § 404.1594(f) (1); see also McCalmon v. Astrue, 319 F. App'x 658,
10 659 (9th Cir. 2009). If not, the second step requires the
11 Commissioner to determine whether she has an impairment or
12 combination of impairments that meets or equals an impairment in
13 the Listing of Impairments ("Listing") set forth at 20 C.F.R.
14 part 404, subpart P, appendix 1; if so, she continues to be
15 disabled. § 404.1594(f) (2). If not, the third step requires the
16 Commissioner to determine whether medical improvement has
17 occurred.² § 404.1594(f) (3). If so, the analysis proceeds to
18 step four; if not, it proceeds to step five. Id.

19 If medical improvement has occurred, the fourth step
20 requires the Commissioner to determine whether the improvement is
21 related to her ability to work – that is, whether there has been
22 an increase in the recipient's residual functional capacity

24 ² Medical improvement is "any decrease in the medical
25 severity of [a recipient's] impairment(s) which was present at
26 the time of the most recent favorable medical decision that [the
27 recipient was] disabled or continued to be disabled."
28 § 404.1594(b) (1). "A determination that there has been a
decrease in medical severity" must be based on "improvement[] in
the symptoms, signs, and/or laboratory findings associated with
[a recipient's] impairment(s)." Id.

1 ("RFC")³ from the most recent favorable medical decision.
2 § 404.1594(f)(4). If medical improvement is not related to the
3 recipient's ability to work, the analysis proceeds to step five;
4 if it is, it proceeds to step six. Id.

5 If medical improvement has not occurred or if it is not
6 related to the recipient's ability to work, the fifth step
7 requires the Commissioner to determine whether an exception to
8 medical improvement applies. § 404.1594(f)(5). Under the first
9 group of exceptions, the Commissioner can find a recipient no
10 longer disabled even though she has not medically improved if she
11 is able to engage in substantial gainful activity; if one of
12 those exceptions applies, the analysis proceeds to step six.
13 § 404.1594(d). Under the second group of exceptions, the
14 Commissioner can find a recipient no longer disabled without
15 determining medical improvement or an ability to engage in
16 substantial gainful activity; if one of those exceptions applies,
17 the recipient is no longer disabled. § 404.1594(e). If none of
18 the exceptions apply, the recipient continues to be disabled.
19 § 404.1594(f)(5).

20 The sixth step requires the Commissioner to determine
21 whether all the recipient's current impairments in combination
22 are "severe," which means that they significantly limit her
23 ability to do basic work activities; if not, she is no longer
24 disabled. § 404.1594(f)(6).

25 If the recipient's current impairments in combination are

27 ³ RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. § 404.1545(a)(1); see also Cooper
v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 severe, the seventh step requires the Commissioner to determine
2 whether she has sufficient RFC, "based on all [her] current
3 impairments," to perform her past relevant work; if so, she is no
4 longer disabled. § 404.1594(f)(7).

5 If the recipient is unable to do her past work, the eighth
6 and final step requires the Commissioner to determine, using the
7 RFC assessed in step seven, whether she can perform any other
8 substantial gainful work; if so, she is no longer disabled.
9 § 404.1594(f)(8). If not, she continues to be disabled. Id.

10 B. The ALJ's Application of the Eight-Step Process

11 At step one, the ALJ found that Plaintiff had not engaged in
12 substantial gainful activity from May 21, 2009, the date of her
13 most recent favorable medical decision,⁴ through November 15,
14 2018, the date of the ALJ's decision. (AR 42.) In the 2009 CPD,
15 Plaintiff had the impairments of fibromyalgia and chronic fatigue
16 syndrome. (Id.) As of June 1, 2016, the ALJ found, she had
17 medically determinable impairments of fibromyalgia, chronic
18 fatigue syndrome, Lyme disease, CIRS, positional hypotension with
19 dizziness, sinusitis, asthma, depression, and anxiety. (Id.) At
20 step two, the ALJ concluded that these impairments did not meet
21 or equal a listing. (Id.) At step three, she found that medical
22 improvement had occurred, and Plaintiff's "medical records
23 confirm" that by June 1, 2016, "there had been a decrease in
24 medical severity of the impairments present at the time of the

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26 ⁴ The most recent favorable medical decision is also known
27 as the comparison-point decision ("CPD"). See Program Operations
28 Manual System (POMS) DI 28010.105, U.S. Soc. Sec. Admin. (Jan.
13, 2016), <http://secure.ssa.gov/apps10/poms.nsf/lrx/0428010105>;
see also § 404.1594(b)(7).

1 CPD." (AR 44.) At step four, she determined that Plaintiff's
2 medical improvement was related to her ability to work "because
3 it resulted in an increase in [her] residual functional
4 capacity." (AR 45.)

5 At step six, the ALJ found that since June 1, 2016,
6 Plaintiff continued to have "a severe impairment or combination
7 of impairments." (Id.) She also noted that Plaintiff had the
8 "nonsevere" "medically determinable impairment of irritable bowel
9 syndrome." (Id.)

10 At step seven, she concluded that based on all of
11 Plaintiff's impairments, she had the RFC to perform "light work"
12 with the following limitations: "occasionally . . . climb
13 ladders, ropes or scaffolds"; "frequently climb ramps or stairs,
14 balance, stoop, kneel, crouch, and crawl"; "avoid exposure to
15 unprotected heights and moving mechanical parts"; "avoid
16 concentrated exposure to fumes, odors, dusts, gases, and poor
17 ventilation"; and "understand, remember, and carry out simple,
18 routine work tasks." (AR 46.) The ALJ determined that Plaintiff
19 was unable to perform her past relevant work as an executive
20 director of a nonprofit organization. (AR 51.)

21 At step eight, she found that Plaintiff could work as a
22 fundraiser II, survey worker, or information clerk. (AR 51-52.)
23 Accordingly, she found that her disability had ended as of June
24 1, 2016. (AR 52-53.)

25 **V. DISCUSSION**

26 Plaintiff alleges that the ALJ erred in evaluating the
27 opinion of internist Neil Hirschenbein. (See J. Stip. at 7-17,
28 23-25.) Because the ALJ failed to provide a specific and

1 legitimate reason for giving little weight to that opinion, the
2 matter must be remanded for further analysis and findings.

3 A. Applicable Law

4 Three types of physicians may offer opinions in Social
5 Security cases: those who directly treated the plaintiff, those
6 who examined but did not treat the plaintiff, and those who did
7 neither. See Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996
8 (as amended). A treating physician's opinion is generally
9 entitled to more weight than an examining physician's, and an
10 examining physician's opinion is generally entitled to more
11 weight than a nonexamining physician's. Id.; see
12 § 404.1527(c) (1)-(2).⁵

13 The ALJ may discount a physician's opinion regardless of
14 whether it is contradicted. Magallanes v. Bowen, 881 F.2d 747,
15 751 (9th Cir. 1989); see also Carmickle v. Comm'r, Soc. Sec.
16 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008). When a doctor's
17 opinion is not contradicted by other medical-opinion evidence,
18 however, it may be rejected only for a "clear and convincing"
19 reason. Magallanes, 881 F.2d at 751 (citations omitted);
20 Carmickle, 533 F.3d at 1164 (citing Lester, 81 F.3d at 830-31).
21 When it is contradicted, the ALJ need provide only a "specific
22 and legitimate" reason for discounting it. Carmickle, 533 F.3d
23 at 1164 (citing Lester, 81 F.3d at 830-31). The weight given a
24 doctor's opinion, moreover, depends on whether it is consistent

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26 ⁵ For claims filed on or after March 27, 2017, the rules in
27 § 404.1520c (not § 404.1527) apply. See § 404.1520c (evaluating
28 Plaintiff's claim was filed before March 27, 2017, however, and
the Court therefore analyzes it under former § 404.1527.

1 with the record and accompanied by adequate explanation, among
2 other things. See § 404.1527(c); see also Orn v. Astrue, 495
3 F.3d 625, 631 (9th Cir. 2007) (factors in assessing physician's
4 opinion include length of treatment relationship, frequency of
5 examination, and nature and extent of treatment relationship).

6 B. Relevant Background

7 On July 5, 2018, Dr. Hirschenbein completed a preprinted
8 "PHYSICAL RESIDUAL FUNCTIONAL CAPACITY QUESTIONNAIRE." (AR 1317-
9 20, 1322.) Dr. Hirschenbein's check-box responses indicated that
10 Plaintiff was "incapable of even 'low stress' jobs"; could "walk
11 . . . [less than one] block" "without rest or severe pain"; could
12 "[s]it 45 minutes" "at one time . . . before needing to get up";
13 could "[s]tand 5 minutes" "at one time . . . before needing to
14 sit down [or] walk around"; could "sit . . . a total of" "less
15 than 2 hours" "in an 8-hour working day"; "need[ed] a job that
16 permit[ted] shifting positions at will from sitting, standing, or
17 walking"; "need[ed] to take unscheduled breaks" every 45 minutes
18 and lasting 10 minutes each; needed to elevate her legs at "chair
19 height" during "prolonged sitting"; could "rarely . . . lift less
20 than 10 pounds," "look up [or] hold [her] head in [a] static
21 position," or "twist," "stoop," or "climb stairs"; could
22 "occasionally . . . look down" or "turn [her] head right or
23 left"; could "never" lift more than 10 pounds, "crouch/squat," or
24 "climb ladders"; could "grasp, turn, [or] twist objects" with her
25 hands bilaterally one percent of the time; could "fine[ly]
26 manipulat[e]" the fingers on either hand five percent of the
27 time; and could never reach bilaterally. (AR 1318-20.) Her
28 impairments would cause her to be "absent from work . . . more

1 than four days [a] month." (AR 1320.)

2 The statement noted that Plaintiff had chronic fatigue,
3 fibromyalgia, CIRS, Lyme disease, anxiety, and depression, and
4 her conditions caused fatigue, chronic pain, anxiety, depression,
5 and "cognitive dysfunction." (AR 1317.) The opinion listed as
6 supporting clinical findings "positive Lyme Western Blot"⁶ and
7 "MARCoNS⁷ nasal culture" as well as "low CD57."⁸ (Id.)

8 The ALJ did not specifically discuss Dr. Hirschenbein's
9 opinion; instead, she addressed it as part of a group of five
10 doctors' opinions. (AR 50.) She gave "little weight" to all
11 five. (Id.) Initially, she found that they "failed to reference
12 sufficient medically acceptable objective clinical or diagnostic
13 findings to support" them. (Id.) Further, they "appear[ed] to
14

15 ⁶ The Western Blot is a laboratory test to detect antibodies
16 to *Borrelia Burgdorferi*, a bacteria that causes Lyme disease.
17 Lyme Disease, Mayo Clinic, [https://www.mayoclinic.org/
diseases-conditions/lyme-disease/diagnosis-treatment/drc-20374655](https://www.mayoclinic.org/diseases-conditions/lyme-disease/diagnosis-treatment/drc-20374655)
18 (last visited Mar. 26, 2021).

19 ⁷ A deep nasal swab tests for Multiple Antibiotic Resistant
20 Coagulate Negative Staphylococci, or "MARCoNS," to identify CIRS.
21 Chronic Inflammatory Response Syndrome, Parliament of Austl.,
22 [https://www.aph.gov.au/Parliamentary_Business/Committees/House/
Health_Aged_Care_and_Sport/BiotoxinIllnesses/Report/](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Health_Aged_Care_and_Sport/BiotoxinIllnesses/Report/) (last
23 visited Mar. 26, 2021). Some dispute that MARCoNS and CIRS are
24 legitimate medical diagnoses, see, e.g., MARCoNS: Not a Real
Diagnosis, LymeScience, <https://lymescience.org/marcons/> (last
visited Mar. 26, 2021), but the ALJ found CIRS as a medically
determinable impairment, and Defendant has not challenged that
finding or the validity of the MARCoNS test.

25 ⁸ A decrease in the CD57 lymphocyte subset may be an
26 important marker of chronic Lyme disease. Decreased CD57
Lymphocyte Subset in Patients with Chronic Lyme Disease,
27 Immunology Letters, [https://www.sciencedirect.com/science/
article/abs/pii/S0165247800003163?via%3Dihub](https://www.sciencedirect.com/science/article/abs/pii/S0165247800003163?via%3Dihub) (last visited Mar.
28 26, 2021).

1 have been formed based largely on [Plaintiff's] subjective
2 complaints with little consideration of positive objective
3 clinical or diagnostic findings." (Id.) Finally, they were not
4 "support[ed]" by the "objective medical evidence or other medical
5 evidence." (Id.) She noted that Plaintiff's "mental status and
6 physical examinations showed no worse than mild level with
7 appropriate mood and affect and normal range of motion and gait."
8 (AR 50-51 (citing AR 892, 915, 968, 1074).)

9 C. Analysis

10 Dr. Hirschenbein's opinion was inconsistent with that of
11 internal-medicine consultative examiner Bahaa Girgis, who opined
12 that Plaintiff was capable of a range of medium work with
13 limitations. (AR 867-72.) Therefore, the ALJ needed to provide
14 only a "specific and legitimate reason" for discounting Dr.
15 Hirschenbein's opinion, Carmickle, 533 F.3d at 1164 (citation
16 omitted), but she failed to do so.

17 As an initial matter, the Court cannot determine whether the
18 ALJ intended all three reasons for discounting the opinions to
19 apply to Dr. Hirschenbein's opinion because she lumped her
20 discussion of his opinion with that of four other doctors. (AR
21 50.) Although part of her discussion appeared to apply to all of
22 the opinions (see id. (referring to "these opinions")), she in
23 other parts of her discussion referenced only one of them (see
24 id. (identifying "this opinion" and "the assessment")).

25 Even assuming the ALJ intended all of her reasons for
26 discounting the opinions to apply to Dr. Hirschenbein's, none of
27 them were specific and legitimate. First, she concluded that the
28 opinion "failed to reference sufficient medically acceptable

1 objective clinical or diagnostic findings to support" it. (Id.)

2 But Dr. Hirschenbein listed in support of his opinion three
3 separate clinical-test results: "positive Lyme Western Blot" and
4 "MARCoNS nasal culture" as well as "low CD57." (AR 1317.)

5 Defendant argues that the Western Blot test results were negative
6 under criteria established by the Centers for Disease Control.

7 (J. Stip. at 21-22 (citing AR 1289-90).) That is not a reason
8 the ALJ gave, however, and therefore the Court cannot consider
9 it. See Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1225

10 (9th Cir. 2009) (district court must "review the ALJ's decision
11 based on the reasoning and factual findings offered by the ALJ –
12 not post hoc rationalizations that attempt to intuit what the
13 adjudicator may have been thinking" (citations omitted)).

14 But even assuming Defendant is correct, he does not
15 challenge the other two test results relied on by Dr.
16 Hirschenbein, and in any event, Plaintiff's Lyme-disease
17 diagnosis is not at issue because the ALJ found that Plaintiff
18 had it. (See AR 42.) Although positive Lyme disease and CIRS
19 tests do not necessarily mean that Dr. Hirschenbein's limitations
20 were warranted, those results did constitute "objective clinical
21 or diagnostic" support for his findings, contrary to the ALJ's
22 conclusion otherwise. See Morgan v. Colvin, No. 6:12-CV-01235-
23 AA., 2013 WL 6074119, at *10-11 (D. Or. Nov. 13, 2013) (ALJ
24 improperly discounted doctor's opinion that plaintiff suffered
25 from Lyme disease and mercury poisoning and had several
26 functional limitations from them because opinion was corroborated
27 by positive blood tests and specialist's opinion). And there are
28 no objective laboratory tests for chronic fatigue syndrome, see

1 Salomaa v. Honda Long Term Disability Plan, 642 F.3d 666, 677
2 (9th Cir. 2011) (as amended), or fibromyalgia, see Benecke v.
3 Barnhart, 379 F.3d 587, 590 (9th Cir. 2004). The ALJ erred in
4 discounting Dr. Hirchenbein's opinion on this basis.

5 The same is true of the ALJ's second reason for discounting
6 the opinion: that it was "formed based largely on [Plaintiff's]
7 subjective complaints with little consideration of positive
8 objective clinical or diagnostic findings." (AR 50.) As
9 previously noted, Dr. Hirschenbein's opinion specifically
10 considered objective clinical testing and thus Plaintiff's
11 subjective complaints were not its sole foundation. Further, a
12 patient's subjective complaints generally play a significant role
13 in medical opinions on the limitations caused by fibromyalgia and
14 chronic fatigue syndrome. See Revels v. Berryhill, 874 F.3d 648,
15 656-57, 663 (9th Cir. 2017) (because fibromyalgia is marked by
16 normal objective findings and diagnosed based on patient's
17 subjective complaints, ALJ erred by discounting treating
18 physician's opinion as unsupported by objective findings);
19 Reddick v. Chater, 157 F.3d 715, 725-26 (9th Cir. 1998) (finding
20 that ALJ's rejection of doctors' opinions on premise that they
21 were based on plaintiff's subjective complaints was "ill-suited"
22 to chronic fatigue syndrome because reasoning ran counter to
23 CDC's published framework for evaluating and diagnosing it, which
24 recognized that presence of persistent fatigue was necessarily
25 self-reported). Therefore, the ALJ erred in discounting Dr.
26 Hirschenbein's opinion because it was "formed based largely on"
27 Plaintiff's subjective complaints.

28 Finally, the ALJ discounted Dr. Hirschenbein's opinion

1 because the objective medical evidence did not support the
2 assessment. She erred, however, in not specifically identifying
3 which aspects of the opinion were inconsistent with which medical
4 evidence. Indeed, a portion of her discussion of this reason
5 referred to a single doctor's "assessment" (AR 50), so it's not
6 clear that she even meant this reason to pertain to Dr.
7 Hirschenbein's functionality findings, and she failed to
8 specifically identify which portions of the opinions she was
9 discrediting on this basis. See Embrey v. Bowen, 849 F.2d 418,
10 421-22 (9th Cir. 1988) (holding that ALJ's conclusion that
11 doctor's opinions were contrary to objective findings, including
12 "relative lack of positive findings," was not sufficiently
13 specific); Weiskopf v. Berryhill, 693 F. App'x 539, 541 (9th Cir.
14 2017) (ALJ's recitation of portions of physician's treatment
15 notes and statement that physician's opinion was inconsistent
16 with notes failed to set forth specific and legitimate reason for
17 rejecting opinion).

18 The ALJ cited several treatment notes as "show[ing] no worse
19 than mild level with appropriate mood and affect and normal range
20 of motion and gait" (AR 51), but she did not specifically discuss
21 any of the "normal" examination findings or explain how those
22 normal findings were inconsistent with the specific limitations
23 Dr. Hirschenbein assessed. This was especially crucial with
24 fibromyalgia and chronic fatigue syndrome, which often manifest
25 with "normal" objective findings. See Revels, 874 F.3d at 665-66
26 (finding that ALJ erred in rejecting physical therapist's
27 functional-capacity evaluation as "far beyond what is supported
28 by objective testing" because ALJ's reasoning was based on flawed

1 understanding of fibromyalgia, which often shows "normal"
2 examination and test results); Daniel D. v. Comm'r, Soc. Sec.
3 Admin., No. 3:18-cv-00654-HZ, 2019 WL 4467631, at *8 (D. Or.
4 Sept. 17, 2019) ("Plaintiff's normal range of motion, normal
5 strength, and normal gait are not inconsistent with a diagnosis
6 of chronic fatigue syndrome."). Therefore, the ALJ's analysis
7 "does not achieve the level of specificity" required by the Ninth
8 Circuit. Embrey, 849 F.2d at 421.

9 The Court cannot conclude that the ALJ's failure to
10 specifically identify which aspects of Dr. Hirschenbein's opinion
11 were inconsistent with which pieces of medical evidence was
12 harmless, cf. Howell v. Comm'r Soc. Sec. Admin., 349 F. App'x
13 181, 184 (9th Cir. 2009) (finding any error in discounting
14 doctor's opinion based on "fill-in-the blank" form harmless
15 because ALJ provided other appropriate reasons), because as
16 explained, her other reasons were also infirm. And the VE
17 testified at the hearing that there would be no work for a person
18 who would be off task 20 percent of the workday or absent from
19 work at least two or three times a month, as Dr. Hirschenbein
20 opined. (AR 87.) Although there were several medical opinions
21 that conflicted with Dr. Hirschenbein's, the ALJ did not
22 specifically discuss the findings or opinions of those providers
23 in giving Dr. Hirschenbein's opinion little weight.⁹ See Bray,
24 554 F.3d at 1225. Indeed, although Defendant points to the
25 contrary opinions of Drs. Nadella and Girgis and the state-agency

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27 ⁹ The only thing the ALJ said in this regard was that the
28 five doctors' opinions were "inconsistent with medical evidence
from other medical and nonmedical sources." (AR 50.)

1 reviewing doctors as supporting the ALJ's rejection of Dr.
2 Hirschenbein's opinion (see J. Stip. at 10-11), the ALJ in fact
3 also discounted those doctors' opinion that Plaintiff could
4 perform medium work and found that Dr. Nadella's opinion "did not
5 consider the combined effect of [Plaintiff's] impairments and
6 . . . subjective complaints" (AR 50).

7 For all these reasons, the ALJ failed to provide a specific
8 and legitimate reason for discounting Dr. Hirschenbein's
9 functional assessment, and the error was not harmless.

10 When, as here, an ALJ errs and the error is not harmless,
11 the Court generally has discretion to remand for further
12 proceedings. See Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th
13 Cir. 2000) (as amended). When no useful purpose would be served
14 by further administrative proceedings, however, or when the
15 record has been fully developed, it is appropriate under the
16 "credit-as-true" rule to direct an immediate award of benefits.
17 Id. at 1179 (noting that "the decision of whether to remand for
18 further proceedings turns upon the likely utility of such
19 proceedings"); see also Garrison v. Colvin, 759 F.3d 995, 1019-20
20 (9th Cir. 2014). The Court has "some flexibility" in applying
21 the credit-as-true rule, however. Connett v. Barnhart, 340 F.3d
22 871, 876 (9th Cir. 2003). This flexibility should be exercised
23 "when the record as a whole creates serious doubt as to whether
24 the claimant is, in fact, disabled within the meaning of the
25 Social Security Act." Garrison, 759 F.3d at 1021.

26 Because other doctors assessed that Plaintiff could work
27 with limitations, as noted by the ALJ (see generally AR 105-07,
28 867-72, 883-87; see also J. Stip. at 17, 21 (Defendant arguing

1 same)), the Court has serious doubt as to whether she continues
2 to be disabled. See Garrison, 759 F.3d at 1021. Further, Dr.
3 Hirschenbein rendered his opinion in July 2018, more than two
4 years after the finding that she was no longer disabled. It is
5 possible that the 2016 decision was correct at the time but that
6 Plaintiff subsequently became disabled again. The record needs
7 to be developed on that front. Further administrative
8 proceedings would thus allow the ALJ to give proper consideration
9 to Dr. Hirschenbein's opinion and, if she chooses to again give
10 little weight to it, provide an adequate discussion of the
11 reasons why. For this reason, too, remand is appropriate. See
12 id.

13 **VI. CONCLUSION**

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

19
20 DATED: March 29, 2021



JEAN ROSENBLUTH
U.S. Magistrate Judge