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

ELEANORADIANNE R., <sup>1</sup>	)	Case No. EDCV 20-1080 (JPR)
	)	
Plaintiff,	)	<b>MEMORANDUM DECISION AND ORDER</b>
v.	)	<b>REVERSING COMMISSIONER</b>
	)	
ANDREW SAUL, Commissioner	)	
of Social Security,	)	
	)	
Defendant.	)	

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**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying her applications for Social Security disability insurance benefits ("DIB") and supplemental security income benefits ("SSI"). The matter is before the Court on the parties' Joint Stipulation, filed April 2, 2021, 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

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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.

1 remanded for further proceedings.

2 **II. BACKGROUND**

3 Plaintiff was born in 1969. (Administrative Record ("AR")  
4 222, 226.) She completed high school and worked as a cashier,  
5 housekeeper, and merchandiser. (AR 270.)

6 On August 3, 2015, Plaintiff applied for DIB and SSI,  
7 alleging that she had been unable to work since June 5, 2015,  
8 because she had "problems with [her] feet" and "blockage of [her]  
9 legs" and couldn't stand or walk for long. (AR 269; see also AR  
10 222-32.) After her applications were denied initially (AR 146-  
11 50) and on reconsideration (AR 153-58), she requested a hearing  
12 before an Administrative Law Judge (AR 160, 162). One was held  
13 on February 21, 2019, at which Plaintiff, who was not represented  
14 by counsel, testified, as did a vocational expert. (See AR 39-  
15 68.) In a written decision issued March 21, 2019, the ALJ found  
16 Plaintiff not disabled. (AR 20-31.) She sought Appeals Council  
17 review (AR 218-19), which was denied on March 31, 2020 (AR 1-6).  
18 This action followed.

19 **III. STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the  
21 Commissioner's decision to deny benefits. The ALJ's findings and  
22 decision should be upheld if they are free of legal error and  
23 supported by substantial evidence based on the record as a whole.  
24 See Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.  
25 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
26 means such evidence as a reasonable person might accept as  
27 adequate to support a conclusion. Richardson, 402 U.S. at 401;  
28 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It

1 is "more than a mere scintilla, but less than a preponderance."  
2 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.  
3 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). "[W]hatever the  
4 meaning of 'substantial' in other contexts, the threshold for  
5 such evidentiary sufficiency is not high." Biestek v. Berryhill,  
6 139 S. Ct. 1148, 1154 (2019). To determine whether substantial  
7 evidence supports a finding, the reviewing court "must review the  
8 administrative record as a whole, weighing both the evidence that  
9 supports and the evidence that detracts from the Commissioner's  
10 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
11 1998). "If the evidence can reasonably support either affirming  
12 or reversing," the reviewing court "may not substitute its  
13 judgment" for the Commissioner's. Id. at 720-21.

#### 14 **IV. THE EVALUATION OF DISABILITY**

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

##### 21 A. The Five-Step Evaluation Process

22 An ALJ follows a five-step sequential evaluation process to  
23 assess whether someone is disabled. 20 C.F.R. §§ 404.1520(a)(4),  
24 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.  
25 1995) (as amended Apr. 9, 1996). In the first step, the  
26 Commissioner must determine whether the claimant is currently  
27 engaged in substantial gainful activity; if so, the claimant is  
28 not disabled and the claim must be denied. §§ 404.1520(a)(4)(i),

1 416.920(a)(4)(i).

2 If the claimant is not engaged in substantial gainful  
3 activity, the second step requires the Commissioner to determine  
4 whether the claimant has a "severe" impairment or combination of  
5 impairments significantly limiting her ability to do basic work  
6 activities; if not, a finding of not disabled is made and the  
7 claim must be denied. §§ 404.1520(a)(4)(ii) & (c),  
8 416.920(a)(4)(ii) & (c).

9 If the claimant has a "severe" impairment or combination of  
10 impairments, the third step requires the Commissioner to  
11 determine whether the impairment or combination of impairments  
12 meets or equals an impairment in the Listing of Impairments  
13 ("Listing") set forth at 20 C.F.R., part 404, subpart P, appendix  
14 1; if so, disability is conclusively presumed and benefits are  
15 awarded. §§ 404.1520(a)(4)(iii) & (d), 416.920(a)(4)(iii) & (d).

16 If the claimant's impairment or combination of impairments  
17 does not meet or equal one in the Listing, the fourth step  
18 requires the Commissioner to determine whether the claimant has  
19 sufficient residual functional capacity ("RFC")<sup>2</sup> to perform her  
20 past work; if so, she is not disabled and the claim must be  
21 denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The claimant  
22 has the burden of proving she is unable to perform past relevant  
23 work. Drouin, 966 F.2d at 1257. If the claimant meets that

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25 <sup>2</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 burden, a prima facie case of disability is established. Id.

2 If that happens or if the claimant has no past relevant  
3 work, the Commissioner bears the burden of showing that the  
4 claimant is not disabled because she can perform other  
5 substantial gainful work available in the national economy, the  
6 fifth and final step of the sequential analysis.

7 §§ 404.1520(a)(4)(v), 404.1560(b), 416.920(a)(4)(v), 416.960(b).

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

9 At step one, the ALJ found that Plaintiff had not engaged in  
10 substantial gainful activity since June 5, 2015, the alleged  
11 onset date; her date last insured was December 31, 2017. (AR  
12 23.) At step two, she determined that Plaintiff had severe  
13 impairments of cirrhosis, scoliosis, degenerative disc disease of  
14 the cervical spine, "lumbar radiculopathy affecting the right L4  
15 and L5 nerve roots," "distal polyneuropathy,"<sup>3</sup> "history of left  
16 cerebral subarachnoid and extra-axial hemorrhage<sup>4</sup> and hematoma,"  
17 "cognitive disorder secondary to subarachnoid brain hemorrhage,"  
18 and "history of alcohol abuse." (Id.)

19 At step three, she found that Plaintiff's impairments did  
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21 <sup>3</sup> Polyneuropathy results from peripheral-nerve damage. What  
22 Is Polyneuropathy?, Healthline, <https://www.healthline.com/health/polyneuropathy> (last visited June 11, 2021). Distal  
23 polyneuropathy causes burning or tingling sensations, especially  
in the feet and hands. (Id.)

24 <sup>4</sup> Extra-axial hemorrhage is bleeding that occurs within the  
25 skull but outside of the brain tissue. Intracranial Hemorrhage,  
26 Wikipedia, [https://en.wikipedia.org/wiki/Intracranial\\_hemorrhage](https://en.wikipedia.org/wiki/Intracranial_hemorrhage)  
27 (last visited June 11, 2021). One type, subarachnoid hemorrhage,  
28 is bleeding in the space between the brain and the surrounding  
membrane. Subarachnoid Hemorrhage, Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/subarachnoid-hemorrhage/symptoms-causes/syc-20361009> (last visited June 11, 2021).

1 not meet or equal any of the impairments in the Listing. (AR 23-  
2 24.) At step four, she determined that Plaintiff had the RFC to  
3 perform light work

4 except she can stand and walk four hours, and she needs  
5 an assistive device for long distance (more than 100  
6 feet) ambulation to avoid falls. She is limited to  
7 occasional use of bilateral lower extremities (foot  
8 pedals), occasionally climb ramps and stairs, cannot walk  
9 on uneven terrain, occasionally crouch, crawl, kneel, and  
10 cannot work at unprotected heights and cannot climb  
11 ladders, ropes of [sic] scaffolds. She can frequently  
12 reach, handle, finger, and feel. She is limited to  
13 simple, routine tasks, and occasional interaction with  
14 supervisors, coworkers and the public.

15 (AR 24.) The ALJ found that Plaintiff was unable to perform any  
16 past relevant work, but she could work at several jobs

17 "exist[ing] in significant numbers in the national economy."

18 (AR 29.) Accordingly, she found her not disabled. (AR 30-31.)

## 19 **V. DISCUSSION**

20 Plaintiff alleges that the ALJ erred in evaluating her  
21 subjective symptom statements and assessing the opinions of  
22 treating physician Robert Kounang. (See J. Stip. at 4-14, 20-  
23 26.) As discussed below, the ALJ erred by failing to assign any  
24 specific weight to Dr. Kounang's opinions or address his findings  
25 that Plaintiff was limited to sedentary work and was unable to  
26 climb stairs, walk "efficiently/long distance," or sit "long  
27 term." (AR 731.) The omission was not harmless because some of  
28 the doctor's findings conflicted with the RFC. Accordingly,

1 remand is necessary.

2 A. The ALJ Erred in Failing to Assign Any Particular  
3 Weight to Dr. Kounang's Opinions or Explain Why She Did  
4 Not Incorporate Them into the RFC

5 1. Relevant background

6 On April 13, 2017, Dr. Kounang, who specialized in "physical  
7 medicine and rehabilitation" and had been treating Plaintiff  
8 since March 2016, conducted a "Physical Disability Evaluation" of  
9 her. (AR 419-20, 730-31.) She complained that she was "unable  
10 to stand/climb stairs" or walk "long distance" because of  
11 polyneuropathy and a "[c]ompression fracture" of a vertebra.  
12 (AR 730.) She reported that she had had a stroke in 2016 and  
13 that she was unable to participate in physical therapy. (Id.)

14 During her examination, Plaintiff's upper-extremity strength  
15 was "3/5" on the right and "3+/5" on the left, her lower-  
16 extremity strength was "3/5" bilaterally, she had decreased  
17 sensation bilaterally, and she walked with a slow gait. (AR  
18 730.) Dr. Kounang opined that her condition did "not allow her  
19 to walk efficiently/long distance," she was unable to climb  
20 stairs or sit "long term," and she was "limited to sedentary  
21 work." (AR 731.) The ALJ did not assign any particular weight  
22 to – or even mention – Dr. Kounang's opinions. (AR 27-29.)

23 2. Applicable law

24 Three types of physicians may offer opinions in Social  
25 Security cases: those who directly treated the plaintiff, those  
26 who examined but did not treat the plaintiff, and those who did  
27 neither. See Lester, 81 F.3d at 830. A treating physician's  
28 opinion is generally entitled to more weight than an examining

1 physician's, and an examining physician's opinion is generally  
2 entitled to more weight than a nonexamining physician's. Id.;  
3 see §§ 404.1527(c)(1)-(2), 416.927(c)(1)-(2).<sup>5</sup>

4 The ALJ may discount a physician's opinion regardless of  
5 whether it is contradicted. Magallanes v. Bowen, 881 F.2d 747,  
6 751 (9th Cir. 1989); see also Carmickle v. Comm'r, Soc. Sec.  
7 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008). When a doctor's  
8 opinion is not contradicted by other medical-opinion evidence,  
9 however, it may be rejected only for a "clear and convincing"  
10 reason. Magallanes, 881 F.2d at 751 (citations omitted);  
11 Carmickle, 533 F.3d at 1164 (citing Lester, 81 F.3d at 830-31).  
12 When it is contradicted, the ALJ need provide only a "specific  
13 and legitimate" reason for discounting it. Carmickle, 533 F.3d  
14 at 1164 (citing Lester, 81 F.3d at 830-31). The weight given a  
15 doctor's opinion, moreover, depends on whether it is consistent  
16 with the record and accompanied by adequate explanation, among  
17 other things. See §§ 404.1527(c), 416.927(c); see also Orn v.  
18 Astrue, 495 F.3d 625, 631 (9th Cir. 2007) (factors in assessing  
19 physician's opinion include length, nature, and extent of  
20 treatment relationship and frequency of examination).

21 In evaluating doctors' opinions, an ALJ must state what  
22 weight she has given each opinion and explain why. See §§  
23 404.1527(c)(2), 416.927(c)(2) (requiring ALJ to "give good  
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25 <sup>5</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 the Court therefore  
analyzes them under former §§ 404.1527 and 416.927.



1 reasons" for rejecting treating doctor's opinion); SSR 96-2p,  
2 1996 WL 374188, at \*5 (July 2, 1996) (noting that ALJ must "give  
3 good reasons . . . for the weight given" to treating doctors'  
4 opinions); Edlund v. Massanari, 253 F.3d 1152, 1157 (9th Cir.  
5 2001) (as amended) ("Under 96-2p, reasons must be 'sufficiently  
6 specific to make clear . . . the weight the adjudicator gave to  
7 the treating source's medical opinion and the reasons for that  
8 weight.'"). An ALJ errs when she "does not explicitly reject a  
9 medical opinion or set forth specific, legitimate reasons for  
10 crediting one medical opinion over another." Garrison v. Colvin,  
11 759 F.3d 995, 1012 (9th Cir. 2014).

### 12 3. Analysis

13 In light of the ALJ's failure to specifically assign any  
14 particular weight to Dr. Kounang's opinions – much less "give  
15 good reasons" for apparently rejecting (or not considering)  
16 portions of them – the ALJ erred.<sup>6</sup> Id.; see also Marsh v.  
17 Colvin, 792 F.3d 1170, 1172-73 (9th Cir. 2015) (finding  
18 reversible error when ALJ didn't "even mention" treating doctor  
19 or his notes); Jose Luis V.H. v. Saul, No. EDCV 18-2618-KS, 2020  
20 WL 247315, at \*4-5 (C.D. Cal. Jan. 16, 2020) (finding reversible  
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22 <sup>6</sup> Defendant acknowledges that the ALJ never addressed Dr.  
23 Kounang's opinions but argues that she "implicitly rejected" them  
24 by noting that treating doctor Julia Black had found Plaintiff  
25 not disabled and that Plaintiff then went to another doctor –  
26 "apparently, Dr. Kounang – who would fill out disability papers  
27 for her." (J. Stip. at 25.) But although the ALJ's decision  
28 notes that Dr. Black advised Plaintiff to get a second opinion  
and that Plaintiff "left mad and angry" and stated that she was  
"not coming back" (AR 28 (citing AR 441); see also AR 27), it  
does not even suggest that the ALJ rejected Dr. Kounang's  
opinions because they resulted from forum shopping.

1 error when ALJ failed to specifically mention doctor's opinion or  
2 give it any weight).

3 The error was not harmless. Dr. Kounang's statements that  
4 Plaintiff was unable to climb stairs or sit "long term" and was  
5 limited to sedentary work (AR 731) conflicted with the RFC, which  
6 contained no sitting limitation and allowed occasional stair  
7 climbing and a range of light work (AR 24). And it is unclear  
8 whether Dr. Kounang's opinion that Plaintiff could not walk  
9 "efficiently/long distance" (AR 731) conflicted with the RFC's  
10 "stand and walk four hours" limitation (AR 24). The VE was not  
11 asked at the hearing whether any available work with those  
12 additional limitations existed. Although the VE testified that  
13 certain sedentary jobs were available with Plaintiff's RFC (AR  
14 64), he was not asked whether sedentary work with Dr. Kounang's  
15 additional opined limitations would eliminate all work. Thus,  
16 the Court cannot conclude that the ALJ would have reached the  
17 same result had she considered and credited Dr. Kounang's  
18 opinions. Marsh, 792 F.3d at 1173 (ALJ's failure to discuss  
19 treating doctor's opinion was not harmless because ALJ did not  
20 consider doctor's statement that condition rendered plaintiff  
21 "pretty much nonfunctional").

22 B. Remand for Further Proceedings Is Appropriate

23 When an ALJ errs, the Court "ordinarily must remand for  
24 further proceedings." Leon v. Berryhill, 880 F.3d 1041, 1045  
25 (9th Cir. 2017) (as amended Jan. 25, 2018); see also Harman v.  
26 Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000) (as amended). The  
27 Court has discretion to do so or to award benefits under the  
28 "credit as true" rule. Leon, 880 F.3d at 1044 (citation

1 omitted). “[A] direct award of benefits was intended as a rare  
2 and prophylactic exception to the ordinary remand rule[.]” Id.  
3 at 1045. The “decision of whether to remand for further  
4 proceedings turns upon the likely utility of such proceedings,”  
5 Harman, 211 F.3d at 1179, and when an “ALJ makes a legal error,  
6 but the record is uncertain and ambiguous, the proper approach is  
7 to remand the case to the agency,” Leon, 880 F.3d at 1045  
8 (citation omitted).

9 Here, further administrative proceedings would serve the  
10 useful purpose of allowing the ALJ to give proper consideration  
11 to Dr. Kounang’s opinions. In addition, when a court has  
12 “serious doubt” about whether a plaintiff is disabled, remand for  
13 further proceedings is appropriate. See Garrison, 759 F.3d at  
14 1021. Dr. Kounang’s evaluation contained little explanation for  
15 the opined limitations, which were contradicted by the other  
16 opinion evidence summarized by the ALJ (AR 27-29), suggesting  
17 that Plaintiff could perform a range of light work. Moreover, as  
18 Defendant points out (J. Stip. at 28 n.8), Plaintiff’s drug and  
19 alcohol abuse may have contributed to her impairments.<sup>7</sup> Thus,

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21 <sup>7</sup> Under 42 U.S.C. § 423(d)(2)(C), a claimant “shall not be  
22 considered to be disabled . . . if alcoholism or drug addiction  
23 would . . . be a contributing factor material to the  
24 Commissioner’s determination that the individual is disabled.”  
25 Should the ALJ preliminarily find Plaintiff disabled on remand,  
26 she should consider whether § 423(d)(2)(C) applies based on her  
27 finding that Plaintiff suffered from a “history of alcohol  
28 abuse.” (AR 23.) See §§ 404.1535, 416.935; Bustamante v.  
Massanari, 262 F.3d 949, 955 (9th Cir. 2001) (discussing alcohol  
abuse in context of § 423(d)(2)(C)). Although the ALJ also noted  
Plaintiff’s tobacco abuse (AR 25), it is less clear that tobacco  
counts as a drug for purposes of § 423(d)(2)(C). Cf. Bean v.  
Astrue, No. 08-0978-CV-W-ODS., 2009 WL 4430062, at \*3 (W.D. Mo.

(continued...)

1 remand is appropriate. If the ALJ chooses to discount Dr.  
2 Kounang's opinions on remand, she can then provide an adequate  
3 discussion of the reasons why.

4 Plaintiff also challenges the ALJ's evaluation of her  
5 subjective symptom statements. (J. Stip. at 22-25 & 26.) The  
6 ALJ should reevaluate those once she has properly considered Dr.  
7 Kounang's opinions, so the Court does not address that argument.  
8 See Negrette v. Astrue, No. EDCV 08-0737 RNB., 2009 WL 2208088,  
9 at \*2 (C.D. Cal. July 21, 2009) (finding it unnecessary to  
10 address further disputed issues when court found that ALJ failed  
11 to properly consider treating doctor's opinion and lay-witness  
12 testimony).

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 in  
16 Plaintiff's favor and that this action be remanded for further  
17 proceedings consistent with this Memorandum Decision.

18  
19 DATED: June 14, 2021

  
\_\_\_\_\_  
JEAN ROSENBLUTH  
U.S. Magistrate Judge

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27 <sup>7</sup> (...continued)  
28 Nov. 24, 2009) (discussing tobacco in context of § 423(d)(2)(C)).