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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

OLIVIA SHERLEY S., <sup>1</sup>	)	Case No. EDCV 20-01986-AS
	)	
Plaintiff,	)	<b>MEMORANDUM OPINION AND</b>
	)	
v.	)	<b>ORDER OF REMAND</b>
	)	
KILOLO KIJAKAZI, Acting	)	
Commissioner of the Social	)	
Security Administration, <sup>2</sup>	)	
	)	
Defendant.	)	
_____	)	

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20 For the reasons discussed below, IT IS HEREBY ORDERED that,  
21 pursuant to Sentence Four of 42 U.S.C. § 405(g), this matter is remanded  
22 for further administrative action consistent with this Opinion.

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25 \_\_\_\_\_  
26 <sup>1</sup> Plaintiff's name is partially redacted in accordance with  
27 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.

28 <sup>2</sup> Kilolo Kijakazi, the Acting Commissioner of the Social  
Security Administration, is substituted for her predecessor. See 42  
U.S.C. § 405(g); Fed.R.Civ.P. 25(d).

1 **PROCEEDINGS**

2  
3 On September 24, 2020, Olivia Sherley S. ("Plaintiff") filed a  
4 Complaint seeking review of the Commissioner's denial of her application  
5 for disability insurance benefits under Title II of the Social Security  
6 Act. (Dkt. No. 1). The parties have consented to proceed before the  
7 undersigned United States Magistrate Judge. (Dkt. Nos. 11-12). On June  
8 2, 2021, Defendant filed an Answer and the Administrative Record ("AR").  
9 (Dkt. Nos. 17-18). On January 21, 2022, the parties filed a Joint  
10 Submission ("Joint Stip.") setting forth their respective positions  
11 regarding Plaintiff's claim. (Dkt. No. 27).

12  
13 The Court has taken this matter under submission without oral  
14 argument. See C.D. Cal. L.R. 7-15.

15  
16 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISIONS**

17  
18 On May 21, 2018, Plaintiff, formerly employed as a housekeeping  
19 cleaner, a machine packager, and a taxi dispatcher (see AR 41, 51-53,  
20 192-202), filed an application for disability insurance benefits  
21 alleging a disability onset date of November 9, 2015. (See AR 22, 153-  
22 56). Plaintiff's application was denied, initially on August 24, 2018,  
23 and on reconsideration on December 20, 2018. (See AR 81-84, 86-90).

24  
25 On December 13, 2019, Administrative Law Judge Josephine Arno  
26 ("ALJ") heard testimony from Plaintiff, who was represented by counsel.  
27 (See AR 41-49, 51-53). The ALJ also heard testimony from vocational  
28 expert David Rinehart ("VE"). (See AR 50-57). On February 6, 2020, the

1 ALJ issued a decision denying Plaintiff's request for benefits. (See AR  
2 22-33).

3  
4 Applying the five-step sequential process, the ALJ found at step  
5 one that Plaintiff had not engaged in substantial gainful activity since  
6 November 9, 2015, the alleged onset disability onset date. (AR 24). At  
7 step two, the ALJ determined that Plaintiff had the following severe  
8 impairments: "obesity; lumbar spine degenerative disc disease;  
9 fibromyalgia; right knee degenerative joint disease; alcohol dependence;  
10 arthralgia; and left shoulder tendinosis and degenerative changes." (AR  
11 24).<sup>3</sup> At step three, the ALJ determined that Plaintiff did not have an  
12 impairment or combination of impairments that met or medically equaled  
13 the severity of any of the listed impairments in the regulations. (AR  
14 26).<sup>4</sup>

15  
16 The ALJ then assessed Plaintiff's residual functional capacity  
17 ("RFC")<sup>5</sup> and found that Plaintiff could perform light work<sup>6</sup> with the  
18 following limitations:  
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21 <sup>3</sup> The ALJ found Plaintiff's mental impairments of depression and  
22 anxiety to be nonsevere. (AR 24-26).

23 <sup>4</sup> The ALJ specifically considered Listings 1.02 (major  
24 dysfunction of a joint(s)) and 1.04 (disorders of the spine), and Social  
25 Security Rulings 19-2p ("Evaluating Cases Involving Obesity") and 12-2p  
26 ("Evaluation of Fibromyalgia"). (See AR 26).

27 <sup>5</sup> A Residual Functional Capacity is what a claimant can still do  
28 despite existing exertional and nonexertional limitations. See 20  
C.F.R. § 404.1545(a)(1).

<sup>6</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. § 404.1567(b).

1 [She] is never able to climb ladders, ropes, or scaffolds; she  
2 may climb ladders, ropes, or scaffolds<sup>7</sup>; she may  
3 occasionally balance, stoop, kneel, crouch, or crawl; she may  
4 occasionally reach overhead with the left upper extremity; and  
5 she may have no exposure to unprotected heights and moving or  
6 heavy machinery.

7 (AR 26-32, bracketed footnote added).

8 At step four, the ALJ found that Plaintiff was able to perform her  
9 past relevant work as a housekeeping cleaner as actually performed and  
10 as a taxi starter as actually performed and as generally performed. (AR  
11 32-33). Accordingly, the ALJ found that Plaintiff had not been under a  
12 disability, as defined in the Social Security Act, from November 9, 2015  
13 through February 6, 2020, the date of the decision. (AR 33).

14 The Appeals Council denied Plaintiff's request for review of the  
15 ALJ decision on August 6, 2020. (See AR 182-87).

16 Plaintiff now seeks judicial review of the ALJ's decision, which  
17 stands as the final decision of the Commissioner. See 42 U.S.C. §§  
18 405(g), 1383(c).

#### 19 20 **STANDARD OF REVIEW**

21  
22 This Court reviews the Commissioner's decision to determine if it  
23 is free of legal error and supported by substantial evidence. See  
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25  
26 <sup>7</sup> It appears the ALJ inadvertently included the limitation that  
27 Plaintiff "may climb ladders, ropes, and/or scaffolds." Based on the  
28 ALJ's statement that there should be the limitation of occasional  
climbing of ramps and stairs (AR 31) as well as on ALJ's hypothetical  
question to the VE (see AR 54-55), this statement was mistakenly  
included in the RFC determination as the ALJ apparently meant to include  
the limitation that Plaintiff may "occasionally" climb ramps and stairs.

1 Brewes v. Comm’r, 682 F.3d 1157, 1161 (9th Cir. 2012). “Substantial  
2 evidence” is more than a mere scintilla, but less than a preponderance.  
3 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). “It means such  
4 relevant evidence as a reasonable mind might accept as adequate to  
5 support a conclusion.” Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir.  
6 2017). To determine whether substantial evidence supports a finding,  
7 “a court must consider the record as a whole, weighing both evidence  
8 that supports and evidence that detracts from the [Commissioner’s]  
9 conclusion.” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir.  
10 2001) (internal quotation omitted). As a result, “[i]f the evidence can  
11 support either affirming or reversing the ALJ’s conclusion, [a court]  
12 may not substitute [its] judgment for that of the ALJ.” Robbins v. Soc.  
13 Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).<sup>8</sup>

14  
15 **PLAINTIFF’S CONTENTION**

16  
17 Plaintiff contends that the ALJ erred in making a determination  
18 about Plaintiff’s RFC that was not supported by substantial evidence in  
19 the record. (See Joint Stip. at 4-8, 14-16).  
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27 <sup>8</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 DISCUSSION

2  
3 After consideration of the record as a whole, the Court finds that  
4 Plaintiff's claim warrants a remand for further consideration.

5  
6 **A. The ALJ's RFC Determination Was Not Supported by Substantial**  
7 **Evidence**

8  
9 As discussed above, the ALJ determined that Plaintiff could perform  
10 light work with the limitations she could occasionally balance, stoop,  
11 kneel, crouch, crawl, reach overhead with the left upper extremity, and  
12 climb ramps and stairs, she could not climb ladders, rapes or scaffolds,  
13 and she could not have exposure to unprotected heights and moving or  
14 heavy machinery. (AR 26).

15  
16 As Plaintiff notes (see Joint Stip. at 5-6), the ALJ did not rely  
17 on Plaintiff's testimony in determining the RFC.<sup>9</sup> In an Exertion  
18 Questionnaire dated November 15, 2018, Plaintiff stated, inter alia, she  
19 cannot lift more than 5 pounds, sit more than 30 minutes or bend, and  
20 she can walk about a block. (AR 221-22). At the administrative  
21 hearing, Plaintiff testified, inter alia, that she can lift a gallon of  
22 milk with her right hand and can lift "light stuff" such as three loaves  
23 of bread in a bag, that she can stand for approximately 10 minutes, that  
24 she can walk down the street about four houses before she needs to  
25 return home, that she can sit for about ten to fifteen minutes, and that

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<sup>9</sup> Plaintiff is not challenging the ALJ's rejection of Plaintiff's subjective symptom testimony or the ALJ's rejection of the medical opinion evidence. (See Joint Stip. at 5-6, 15).

1 she needs to rotate positions (sit/stand) all day. (AR 46-47). The ALJ  
2 rejected such testimony and did not include these limitations in the  
3 RFC determination. (See AR 30-31).

4  
5 As Plaintiff also notes (see Joint Stip. at 5), the ALJ did not  
6 rely on any medical opinion evidence in determining the RFC. After  
7 noting that Herman Schoene, M.D. the orthopedic consultative examiner,  
8 and Fulvio Franyutti, M.D. and G. Dale, M.D., the State Agency  
9 physicians, all determined that Plaintiff was able to do medium work  
10 (see AR 31, citing AR 306 [Dr. Schoene report dated August 9, 2018:  
11 Plaintiff can lift/carry 50 pounds occasionally and 25 pounds  
12 frequently, stand/walk and sit 6 hours out of an 8-hour workday,  
13 push/pull on an unlimited basis, and no postural, manipulative, visual,  
14 communicative or environmental limitations], 59-67 [Dr. Franyutti report  
15 dated August 22, 2018: same functional capacity assessment), and 69-79  
16 [Dr. Dale report dated November 30, 2018: same functional capacity  
17 assessment]), the ALJ found these medical opinions "unpersuasive because  
18 they are unsupported by and inconsistent with the medical records as a  
19 whole, which shows diagnostic evidence of degenerative disc disease of  
20 the lumbar spine, degenerative joint disease in the right knee, left  
21 shoulder impairment, and diagnosis of fibromyalgia causing period  
22 arthralgia symptoms." (AR 31). In addition, the ALJ found that while  
23 Dr. Schoene's opinion was consistent with his physical examination  
24 findings, Dr. Schoene's opinion was unpersuasive because "Dr. Schoene  
25 did not have access to the medical records that show periodic flare-ups  
26 of symptoms and periodic physical examination findings that support  
27 additional limitations." (AR 32). Accordingly, the ALJ's RFC  
28 determination was not based on the medical opinions.

1 In assessing Plaintiff's RFC, the ALJ stated that "[t]he positive  
2 objective clinical and diagnostic findings since the alleged onset date  
3 detailed below do not support more restrictive functional limitations  
4 than those assessed herein." (AR 27). As set forth below, this  
5 conclusory statement, without more, does not provide the evidence that  
6 the ALJ relied on when determining that Plaintiff had the RFC to perform  
7 light work with the limitations that she could occasionally balance,  
8 stoop, kneel, crouch, crawl, reach overhead with the left upper  
9 extremity, and climb ramps and stairs.

10  
11 The ALJ found that the medical opinions were unsupported by and  
12 inconsistent with the "diagnostic evidence of degenerative disc disease  
13 of the lumbar spine, degenerative joint disease in the right knee, left  
14 shoulder impairment, and diagnosis of fibromyalgia causing period  
15 arthralgia symptoms." (AR 31, underlining added). Immediately  
16 thereafter, the ALJ wrote, "These impairments warrant a limitation to  
17 light work with occasional climbing of ramps and stairs, balancing,  
18 stooping, kneeling, crouching, and crawling to avoid exacerbation of  
19 pain symptoms in various joints." (Id.).

20  
21 When summarizing the medical record, the ALJ referenced various  
22 diagnostic evidence of degenerative disc disease in the lumbar spine,  
23 degenerative joint disease in the right knee, left shoulder impairment  
24 (tendinosis) and fibromyalgia, including a February 18, 2016 MRI of  
25 Plaintiff's lumbar spine (AR 526), a June 1, 2017 MRI of the left  
26 shoulder (id.), a November 26, 2018 MRI of the right knee (AR 526, 416),  
27 December 13, 2018 x-rays of the right knee (AR 323), and a June 27, 2019  
28 fibromyalgia diagnosis (AR 370-71). (See AR 29-30). However, it is



1 unclear to the Court, and the ALJ failed to state, why such diagnostic  
2 evidence supports the ALJ's determination regarding Plaintiff's ability  
3 to perform light work with the limitations of occasional balancing,  
4 stooping, kneeling, crouching, crawling, reaching overhead with the left  
5 upper extremity, and climbing ramps and stairs.

6  
7       Moreover, even if the ALJ's RFC determination was based on  
8 "positive objective clinical and diagnostic findings" in the record (AR  
9 27), including in medical records generated *after* Dr. Schoene's August  
10 9, 2018 opinion (see AR 32 [the ALJ noted that "Dr. Schoene did not have  
11 access to the medical records that show periodic flare-ups of symptoms  
12 and periodic physical examinations findings that support additional  
13 limitations"]), the ALJ failed to cite to this evidence or state why  
14 such evidence supports the finding that Plaintiff was capable of  
15 performing light work with the limitations of occasional balancing,  
16 stooping, kneeling, crouching, crawling, reaching overhead with the left  
17 upper extremity, and climbing ramps and stairs. See Tackett v. Apfel,  
18 180 F.3d 1094, 1102 (9th Cir. 1999) ("The ALJ must set out in the record  
19 his reasoning and the evidentiary support for his interpretation of the  
20 medical evidence."). Consequently, the Court is unable to find that  
21 substantial evidence supports the ALJ's RFC determination. See Flaten  
22 v. Secretary of Health & Human Services, 44 F.3d 1453, 1457 (9th Cir.  
23 1995) ("Substantial evidence is relevant evidence which, considering the  
24 record as a whole, a reasonable person might accept as adequate to  
25 support a conclusion."); see also Nguyen v. Chater, 172 F.3d 31, 35 (1st  
26 Cir. 1999) (stating that, in a case where the Commissioner argued that  
27 the medical record supported the ALJ's determination about the level of  
28 work the claimant was capable of performing, "[a]s a lay person . . . ,

1 the ALJ was simply not qualified to interpret raw medical data in  
2 functional terms") (citations omitted).

3  
4 **B. Remand Is Warranted**

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

18  
19 Since the ALJ's determination about Plaintiff's RFC was not  
20 supported by substantial evidence, remand is appropriate. Because  
21 outstanding issues must be resolved before a determination of disability  
22 can be made, and "when the record as a whole creates serious doubt as  
23 to whether the [Plaintiff] is, in fact, disabled within the meaning of  
24 the Social Security Act," further administrative proceedings would serve  
25 a useful purpose and remedy defects. Burrell, 775 F.3d at 1141  
26 (citations omitted).

ORDER

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

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: March 31, 2022

\_\_\_\_\_/s/\_\_\_\_\_  
ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE