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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

S.S.,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of  
Social Security,

Defendant.

Case No. 8:19-cv-02284-SHK

OPINION AND ORDER

Plaintiff S.S.<sup>1</sup> (“Plaintiff”) seeks judicial review of the final decision of the Commissioner of the Social Security Administration (“Commissioner,” “Agency,” or “Defendant”) denying her application for disability insurance benefits (“DIB”), under Title II of the Social Security Act (the “Act”). This Court has jurisdiction under 42 U.S.C. § 1383(c)(3), and, pursuant to 28 U.S.C. § 636(c), the parties have consented to the jurisdiction of the undersigned United States Magistrate Judge. For the reasons stated below, the Commissioner’s decision is REVERSED and this action is REMANDED for further proceedings consistent with this Order.

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<sup>1</sup> The Court substitutes Plaintiff’s initials for Plaintiff’s name to protect Plaintiff’s privacy with respect to Plaintiff’s medical records discussed in this Opinion and Order.

1 **I. BACKGROUND**

2 Plaintiff filed an application for DIB on November 20, 2015, alleging  
3 disability beginning on September 4, 2013. Transcript (“Tr.”) 145-46.<sup>2</sup> Following  
4 a denial of benefits, Plaintiff requested a hearing before an administrative law judge  
5 (“ALJ”) and, on August 8, 2018, ALJ Susanne M. Cichanowicz determined that  
6 Plaintiff was not disabled. Tr. 15-28. Plaintiff sought review of the ALJ’s decision  
7 with the Appeals Council, but review was denied on October 22, 2019. Tr. 1-3.  
8 This appeal followed.

9 **II. STANDARD OF REVIEW**

10 The reviewing court shall affirm the Commissioner’s decision if the decision  
11 is based on correct legal standards and the legal findings are supported by  
12 substantial evidence in the record. 42 U.S.C. § 405(g); Batson v. Comm’r Soc.  
13 Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence is “more  
14 than a mere scintilla. It means such relevant evidence as a reasonable mind might  
15 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389,  
16 401 (1971) (citation and internal quotation marks omitted). In reviewing the  
17 Commissioner’s alleged errors, this Court must weigh “both the evidence that  
18 supports and detracts from the [Commissioner’s] conclusions.” Martinez v.  
19 Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

20 ““When evidence reasonably supports either confirming or reversing the  
21 ALJ’s decision, [the Court] may not substitute [its] judgment for that of the ALJ.’”  
22 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting Batson, 359 F.3d at  
23 1196); see also Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (“If the  
24 ALJ’s credibility finding is supported by substantial evidence in the record, [the  
25 Court] may not engage in second-guessing.”) (citation omitted). A reviewing  
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27 <sup>2</sup> A certified copy of the Administrative Record was filed on April 15, 2020. Electronic Case  
28 Filing Number (“ECF No.”) 14. Citations will be made to the Administrative Record or  
Transcript page number rather than the ECF page number.

1 court, however, “cannot affirm the decision of an agency on a ground that the  
2 agency did not invoke in making its decision.” Stout v. Comm’r Soc. Sec. Admin.,  
3 454 F.3d 1050, 1054 (9th Cir. 2006) (citation omitted). Finally, a court may not  
4 reverse an ALJ’s decision if the error is harmless. Burch v. Barnhart, 400 F.3d 676,  
5 679 (9th Cir. 2005) (citation omitted). “[T]he burden of showing that an error is  
6 harmful normally falls upon the party attacking the agency’s determination.”  
7 Shinseki v. Sanders, 556 U.S. 396, 409 (2009).

### 8 III. DISCUSSION

#### 9 A. Establishing Disability Under The Act

10 To establish whether a claimant is disabled under the Act, it must be shown  
11 that:

12 (a) the claimant suffers from a medically determinable physical or  
13 mental impairment that can be expected to result in death or that has  
14 lasted or can be expected to last for a continuous period of not less than  
15 twelve months; and

16 (b) the impairment renders the claimant incapable of performing the  
17 work that the claimant previously performed and incapable of  
18 performing any other substantial gainful employment that exists in the  
19 national economy.

20 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
21 § 423(d)(2)(A)). “If a claimant meets both requirements, he or she is ‘disabled.’”  
22 Id.

23 The ALJ employs a five-step sequential evaluation process to determine  
24 whether a claimant is disabled within the meaning of the Act. Bowen v. Yuckert,  
25 482 U.S. 137, 140 (1987); 20 C.F.R. § 416.920(a). Each step is potentially  
26 dispositive and “if a claimant is found to be ‘disabled’ or ‘not-disabled’ at any step  
27 in the sequence, there is no need to consider subsequent steps.” Tackett, 180 F.3d  
28 at 1098; 20 C.F.R. § 416.920. The claimant carries the burden of proof at steps one

1 through four, and the Commissioner carries the burden of proof at step five.  
2 Tackett, 180 F.3d at 1098.

3 The five steps are:

4 Step 1. Is the claimant presently working in a substantially gainful  
5 activity [(“SGA”)]? If so, then the claimant is “not disabled” within  
6 the meaning of the [] Act and is not entitled to [SSI]. If the claimant is  
7 not working in a [SGA], then the claimant’s case cannot be resolved at  
8 step one and the evaluation proceeds to step two. See 20 C.F.R.  
9 § 404.1520(b).<sup>[3]</sup>

10 Step 2. Is the claimant’s impairment severe? If not, then the  
11 claimant is “not disabled” and is not entitled to [SSI]. If the claimant’s  
12 impairment is severe, then the claimant’s case cannot be resolved at  
13 step two and the evaluation proceeds to step three. See 20 C.F.R.  
14 § 404.1520(c).

15 Step 3. Does the impairment “meet or equal” one of a list of  
16 specific impairments described in the regulations? If so, the claimant is  
17 “disabled” and therefore entitled to [SSI]. If the claimant’s  
18 impairment neither meets nor equals one of the impairments listed in  
19 the regulations, then the claimant’s case cannot be resolved at step  
20 three and the evaluation proceeds to step four. See 20 C.F.R.  
21 § 404.1520(d).

22 Step 4. Is the claimant able to do any work that he or she has  
23 done in the past? If so, then the claimant is “not disabled” and is not  
24 entitled to [SSI]. If the claimant cannot do any work he or she did in  
25 the past, then the claimant’s case cannot be resolved at step four and  
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28 <sup>3</sup> The Court has also considered the parallel regulations set forth in 20 C.F.R. § 416.920 et seq.,  
when analyzing the ALJ’s denial of Plaintiff’s SSI application.

1 the evaluation proceeds to the fifth and final step. See 20 C.F.R.  
2 § 404.1520(e).

3 Step 5. Is the claimant able to do any other work? If not, then  
4 the claimant is “disabled” and therefore entitled to [SSI]. See 20  
5 C.F.R. § 404.1520(f)(1). If the claimant is able to do other work, then  
6 the Commissioner must establish that there are a significant number of  
7 jobs in the national economy that claimant can do. There are two ways  
8 for the Commissioner to meet the burden of showing that there is other  
9 work in “significant numbers” in the national economy that claimant  
10 can do: (1) by the testimony of a vocational expert [(“VE”)], or (2) by  
11 reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404,  
12 subpt. P, app. 2. If the Commissioner meets this burden, the claimant  
13 is “not disabled” and therefore not entitled to [SSI]. See 20 C.F.R. §§  
14 404.1520(f), 404.1562. If the Commissioner cannot meet this burden,  
15 then the claimant is “disabled” and therefore entitled to [SSI]. See id.

16 Id. at 1098-99.

17 **B. Summary Of ALJ’s Findings**

18 The ALJ found at step one, that “[Plaintiff] did not engage in [SGA] during  
19 the period from her alleged onset date (AOD) of September 4, 2013 through her  
20 date last insured of December 31, 2017 (20 CFR 404.1571 et seq.)” Tr. 17. At step  
21 two, the ALJ found that “[Plaintiff] had the following severe impairments:  
22 degenerative disc disease of the lumbar spine, degenerative disc disease of the  
23 cervical spine, and right shoulder impingement syndrome (20 CFR 404.1520(c)).”  
24 Id. At step three, the ALJ found that “[Plaintiff] did not have an impairment or  
25 combination of impairments that met or medically equaled the severity of one of  
26 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR  
27 404.1520(d), 404.1525 and 404.1526).” Tr. 20.

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1 In preparation for step four, the ALJ found that Plaintiff has the residual  
2 functional capacity (“RFC”) to:

3 perform light work as defined in 20 CFR 404.1567(b) and the following  
4 limitations: can lift, carry, push or pull up to 20 pounds occasionally and  
5 10 pounds frequently, however, pushing and pulling with the bilateral  
6 upper extremities is limited to frequent; can stand or walk for six hours  
7 in an eight-hour workday; can sit for six hours in an eight-hour workday;  
8 can occasionally climb ramps and stairs as well as ladders, ropes, and  
9 scaffolds, and can occasionally balance, stoop, kneel, crouch, and crawl;  
10 bilateral overhead reaching is limited to occasional, and bilateral  
11 reaching in all other directions is limited to frequent; and bilateral  
12 handling and fingering are limited to frequent.

13 Id. The ALJ then found, at step four, that “[Plaintiff] was capable of performing  
14 past relevant work (PRW) as an Exhibit-Display Representative and a Sales  
15 Representative (wholesale trade). This work did not require the performance of  
16 work-related activities precluded by [Plaintiff’s] [RFC] (20 CFR 404.1565).” Tr.  
17 26. Specifically, the ALJ found that “[Plaintiff] is able to perform the Exhibit-  
18 Display Representative and Sales Representative (wholesale trade) jobs as generally  
19 and actually performed.” Id.

20 The ALJ, therefore, found that “[Plaintiff] was not under a disability, as  
21 defined in the . . . Act, at any time from September 4, 2013, the alleged onset date,  
22 through December 31, 2017, the date last insured (20 CFR 404.1520(f)).” Tr. 27.

### 23 **C. Issues Presented**

24 In this appeal, Plaintiff raises four issues, including whether the ALJ erred by  
25 failing to properly consider: (1) Plaintiff’s symptom testimony; (2) the opinion of  
26 treating physician Dr. Solemon Hakimi; (3) Plaintiff’s mental impairment at step  
27 two; and (4) the third-party evidence from Shall Javid. ECF No. 15, Joint Stip. at 2.

28

1 The Court finds that the second issue is dispositive, and so it begins and ends its  
2 analysis there.

3 **D. Court's Consideration Of Second Issue**

4 **1. Parties' Arguments**

5 Plaintiff argues that the ALJ erred by not properly considering the opinions  
6 of her treating physician, Dr. Hakimi. Id. at 26-29. Dr. Hakimi opined that  
7 Plaintiff should be limited to “less than full-time work concerning sitting, standing,  
8 and walking” and lifting and carrying up to ten pounds. Id. at 26. Plaintiff  
9 contends that the ALJ did not consider Dr. Hakimi’s “clinical findings and  
10 objective signs” supporting his opinions, instead relying on the “generic rationale”  
11 that “the record ‘shows a history of conservative, routine treatment, aside from  
12 shoulder surgery, and many normal and mild exam findings.’” Id. at 27. Plaintiff  
13 further argues that the ALJ erred in “fail[ing] to address the fact that Dr. Hakimi is  
14 a treating doctor,” implicitly giving Dr. Hakimi’s opinions less weight because they  
15 were “check-the-box” forms, rejecting Dr. Hakimi’s opinions for lack of familiarity  
16 with the disability guidelines, and for implicitly rejecting Dr. Hakimi’s opinions  
17 because they were contrary to the opinion of the state agency reviewing physician.  
18 Id. at 27-29.

19 Defendant responds that the ALJ’s finding was supported by substantial  
20 evidence because the “examination findings during the relevant period did not  
21 support such a range of physical and mental problems” opined by Dr. Hakimi. Id.  
22 at 32-33. Moreover, Defendant contends that the ALJ properly discredited Dr.  
23 Hakimi’s opinions for “not being familiar with the Social Security  
24 Administration’s precise disability guidance,” which was “supported by the fact  
25 that Dr. Hakimi’s opinions were largely untethered to Plaintiff’s verified diagnoses  
26 and treatment history.” Id. at 32. Finally, Defendant notes that “Dr. Hakimi’s  
27 opinion was contradicted by four other medical opinions by doctors who examined  
28 Plaintiff and reviewed her longitudinal records during the relevant period, whereas

1 Dr. Hakimi’s opinion was from March 2018, after the expiration of Plaintiff’s [date  
2 last insured].” Id. at 30.

3 **2. Dr. Hakimi’s Medical Opinions**

4 Dr. Hakimi completed two separate medical questionnaires about Plaintiff,  
5 both of which the ALJ considered. See Tr. 25. On February 16, 2017, Dr. Hakimi  
6 completed a “Physical [RFC] Questionnaire,” in which he indicated that he  
7 treated Plaintiff “as needed.” Tr. 377. Dr. Hakimi diagnosed Plaintiff with  
8 anxiety, vasculitis, back pain, depression, neck pain, and insomnia, and his  
9 prognosis for Plaintiff was “fair.” Id. He indicated that Plaintiff’s symptoms were  
10 back pain and insomnia, and he stated that Plaintiff had “severe low back pain, with  
11 left sciatica, persistent, anxiety make[s] it worse.” Id. Dr. Hakimi identified  
12 Plaintiff’s “clinical findings and objective signs” as “[t]he lumbar area is tender,  
13 with [left] sciatica, cervical MRI showed neural foraminal stenosis,” and he  
14 indicated that she had several epidural injections. Id.

15 With regard to Plaintiff’s lumbar spine, Dr. Hakimi indicated that the  
16 positive objective signs are that her “paraspinals are tender with spasm.” Tr. 378.  
17 He found that she had positive straight leg raising test in both her right and left  
18 legs, and a reduced range of motion “due to pain.” Id. He further noted that she  
19 had muscle spasms, sensory loss, reflex changes, tenderness, and impaired sleep.  
20 Id. With regard to Plaintiff’s cervical spine, Dr. Hakimi indicated that she had a  
21 “significant limitation of motion” in her extension, flexion, left and right rotation,  
22 and left and right lateral bending. Id. He noted that she had muscle spasms, reflex  
23 changes, tenderness, and impaired sleep. Id. Dr. Hakimi also found that Plaintiff  
24 had limited functioning in her upper extremities but that she had no atrophy. Tr.  
25 379-80.

26 Dr. Hakimi indicated that Plaintiff’s psychological conditions, including  
27 depression and anxiety, affected her physical conditions. Tr. 379. He opined that  
28 during a typical workday, Plaintiff’s experience of pain or other symptoms would



1 frequently interfere with the “attention and concentration needed to perform even  
2 simple work tasks.” Id.

3 Dr. Hakimi opined that, if placed in a competitive work environment,  
4 Plaintiff could only walk two city blocks without resting or experiencing severe  
5 pain, she could only sit for 20 minutes at one time before needing to get up, she  
6 could only stand for 10 minutes at one time before needing to sit down or walk  
7 around, and she could only sit and stand/walk for about two hours in an eight-hour  
8 workday. Tr. 380. He further indicated that during an eight-hour workday,  
9 Plaintiff would need to walk every 30 minutes, for 15 minutes at a time. Id. He  
10 noted that Plaintiff could occasionally climb stairs but she could never twist, stoop  
11 (bend), crouch/squat, or climb ladders. Tr. 382. Dr. Hakimi found that Plaintiff  
12 could occasionally reach, handle, finger and peel, but she could never push and/or  
13 pull. Id. Finally, Dr. Hakimi indicated that Plaintiff’s “severe pain of neck and  
14 back, with left sciatica” supported his limitations, and her left Tinel sign was  
15 positive, indicating signs of carpal tunnel. Id.

16 On March 13, 2018, Dr. Hakimi completed a second “Physical [RFC]  
17 Questionnaire,” where he indicated that he treated Plaintiff once every two to  
18 three months or when needed. Tr. 635. He diagnosed Plaintiff with “multiple  
19 myeloma (cancer), herpes zoster, anxiety, depression, severe headache, neck, [and  
20 invasive blood pressure]” and noted that her prognosis was poor. Id. He listed  
21 Plaintiff’s symptoms as “severe neck pain, back pain, headaches, general fatigue,  
22 with normochromic, normocytic anemia,” and he noted that she had “constant  
23 severe neck pain, back pain, headaches.” Id. Dr. Hakimi identified Plaintiff’s  
24 “clinical findings and objective signs” as “neck, thoracic, lumbar spine [and]  
25 paraspinals are tender [and] spastic, diffuse skin [hepatic] lesions.” Id. He further  
26 indicated that Plaintiff did not have chemotherapy because “the side effects  
27 aggravate her clinical signs and symptoms.” Id.

28 / / /

1 With regard to Plaintiff's lumbar spine, Dr. Hakimi found that Plaintiff had  
2 positive straight leg raising tests in both her left and right legs, as well as sensory  
3 loss, reflex changes, tenderness, muscle spasm, muscle weakness, and impaired  
4 appetite or gastritis. Tr. 636. With regard to her cervical spine, Dr. Hakimi  
5 indicated that she had reduced range of motion in extension, flexion, left and right  
6 rotation, and left and right lateral bending. Id.

7 Moreover, Dr. Hakimi found that Plaintiff's psychological conditions,  
8 including depression and anxiety, affected her physical condition. Id. He opined  
9 that during a typical workday, Plaintiff's experience of pain or other symptoms  
10 would constantly interfere with the "attention and concentration needed to  
11 perform even simple work tasks," and she would be incapable of tolerating "even  
12 'low stress' jobs" due to her multiple myeloma. Tr. 637.

13 Dr. Hakimi opined that, if placed in a competitive work environment,  
14 Plaintiff could not walk any city blocks without resting or experiencing severe pain,  
15 she could only sit for one hour at one time before needing to get up, and she could  
16 only stand for 10 minutes at one time before needing to sit down or walk around.  
17 Id. He indicated that she could only sit and stand/walk for about two hours in an  
18 eight-hour workday, and he noted that he "noticed progress deterioration." Id.  
19 He further opined that during an eight-hour workday, Plaintiff would need to walk  
20 every 15 minutes, for 15 minutes at a time. Tr. 638. Dr. Hakimi found that Plaintiff  
21 would need to take unscheduled breaks during an eight-hour workday, which would  
22 depend on her degree of pain but may be every 30 minutes. Id. He indicated that  
23 Plaintiff's legs would need to be elevated with prolonged sitting, and she would  
24 need to use a cane or other assistance device "very soon" while engaging in  
25 occasional standing/walking. Id.

26 Dr. Hakimi further opined that Plaintiff could occasionally lift and carry less  
27 than 10 pounds, look down, turn her head right or left, and look up, and she could  
28 frequently hold her head in a static position. Id. He found that she could

1 occasionally climb stairs and rarely twist, but she could never stoop (bend),  
2 crouch/squat, and climb ladders. Tr. 639. And he indicated she could occasionally  
3 reach, handle, finger, peel, and operate foot controls, but she could never push  
4 and/or pull. Tr. 639-40. Dr. Hakimi noted that his limitations were supported by  
5 Plaintiff's "cervical, thoracic, lumbar spine tenderness, spasm, neurological  
6 deficits in upper and lower extremities," as well as the seemingly shortened life  
7 span of patients with multiple myeloma. Tr. 639. Finally, Dr. Hakimi opined that  
8 Plaintiff would not be able to work. Tr. 638.

### 9                   3.     **ALJ's Consideration Of Dr. Hakimi's Opinions**

10           The ALJ gave little weight to Dr. Hakimi's "check-the-box-forms." Tr. 25.  
11 The ALJ discussed Dr. Hakimi's findings regarding Plaintiff's limitations,  
12 including that he limited Plaintiff to "a less than sedentary exertional level" and  
13 opined that Plaintiff's symptoms would interfere with her attention and  
14 concentration. Id. The ALJ, however, found that Dr. Hakimi's opinions were  
15 "not consistent with the medical evidence record as a whole, which documents  
16 [Plaintiff's] conditions but shows a history of conservative, routine treatment, aside  
17 from the shoulder surgery, and many normal and mild exam findings." Id. The  
18 ALJ further indicated that "as evidenced by the opinion, [Dr. Hakimi] is not  
19 familiar with the Social Security Administration's precise disability guidelines."  
20 Id.

### 21                   4.     **Standard To Review ALJ's Analysis**

22           There are three types of medical opinions in Social Security cases: those  
23 from treating physicians, examining physicians, and non-examining physicians.  
24 Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 692 (9th Cir. 2009) (citation  
25 omitted). "The medical opinion of a claimant's treating physician is given  
26 'controlling weight' so long as it 'is well-supported by medically acceptable clinical  
27 and laboratory diagnostic techniques and is not inconsistent with the other  
28

1 substantial evidence in [the claimant’s] case record.’” Trevizo v. Berryhill, 871  
2 F.3d 664, 675 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(c)(2)).

3 “‘To reject [the] uncontradicted opinion of a treating or examining doctor,  
4 an ALJ must state clear and convincing reasons that are supported by substantial  
5 evidence.’” Id. (quoting Ryan v. Comm’r Soc. Sec. Admin., 528 F.3d 1194, 1198  
6 (9th Cir. 2008)). “This is not an easy requirement to meet: ‘the clear and  
7 convincing standard is the most demanding required in Social Security cases.’”  
8 Garrison v. Colvin, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting Moore v. Comm’r  
9 Soc. Sec. Admin., 278 F.3d 920, 924 (9th Cir. 2002)).

10 “‘If a treating or examining doctor’s opinion is contradicted by another  
11 doctor’s opinion, an ALJ may only reject it by providing specific and legitimate  
12 reasons that are supported by substantial evidence.’” Trevizo, 871 F.3d at 675  
13 (quoting Ryan, 528 F.3d at 1198). “This is so because, even when contradicted, a  
14 treating or examining physician’s opinion is still owed deference and will often be  
15 ‘entitled to the greatest weight . . . even if it does not meet the test for controlling  
16 weight.’” Garrison, 759 F.3d at 1012 (quoting Orn v. Astrue, 495 F.3d 625, 633  
17 (9th Cir. 2007)). “‘The ALJ can meet this burden by setting out a detailed and  
18 thorough summary of the facts and conflicting clinical evidence, stating his  
19 interpretation thereof, and making findings.’” Trevizo, 871 F.3d at 675 (quoting  
20 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)).

## 21 5. ALJ’s Decision Is Not Supported By Substantial Evidence

22 Here, as an initial matter, the Court finds that the ALJ did not specifically  
23 find that Dr. Hakimi’s opinions were contradicted by the opinion of another  
24 doctor. As discussed above, the ALJ found that Dr. Hakimi’s opinions were “not  
25 consistent with the medical evidence record as a whole” and reflected a lack of  
26 familiarity of the disability guidelines. Tr. 25. The ALJ, however, did consider and  
27 discuss other medical opinions that were not entirely consistent with Dr. Hakimi’s  
28 opinions, and, therefore, the Court finds that the specific and legitimate standard

1 applies here. See Trevizo, 871 F.3d at 675. The ALJ’s reasons for rejecting Dr.  
2 Hakimi’s opinions, however, fail to meet even this lower burden for the following  
3 reasons.

4 In assigning little weight to Dr. Hakimi’s opinions,<sup>4</sup> the ALJ first reasoned  
5 that his assessments were inconsistent with the medical record as a whole,  
6 specifically Plaintiff’s conservative, routine treatment and normal or mild exam  
7 findings. Tr. 25. This rationale fails, because the ALJ selectively relied on only  
8 portions of the record to develop these conclusions, while ignoring other material  
9 evidence that supports a contrary conclusion. See Holohan v. Massanari, 246 F.3d  
10 1195, 1207-08 (9th Cir. 2001) (holding an ALJ cannot selectively rely on some  
11 entries in a plaintiff’s records while ignoring others).

12 First, the record does not support the ALJ’s finding that Dr. Hakimi’s  
13 assessments are contradicted by Plaintiff’s “conservative, routine treatment, aside  
14 from the shoulder surgery.” Tr. 25. In discussing Plaintiff’s treatment, the ALJ  
15 indicated that Plaintiff had shoulder surgery, which appears to have improved  
16 Plaintiff’s right shoulder, and “some lumbar epidural steroid injections” in  
17 September 2015, March 2016, and April 2016. Tr. 22-23. The record, however,  
18 reflects that Plaintiff received approximately eight epidural steroid injections to her  
19 back during the relevant period. Tr. 251-52, 313-17, 323, 337, 350-53, 357-60, 366,  
20 274, 400. These epidural steroid injections were preceded by lesser treatments  
21 that failed to alleviate her back pain, including activity modification, physical  
22 therapy, massages, and over-the-counter anti-inflammatory medication. Tr. 313,

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23  
24 <sup>4</sup> As discussed above, Dr. Hakimi provided two medical assessments. The first assessment is  
25 dated February 16, 2017, prior to the date Plaintiff is considered last insured for disability  
26 benefits. The second assessment is dated March 13, 2018, less than three months after Plaintiff’s  
27 date last insured. The ALJ appears to have considered both opinions, and both are relevant to  
28 evaluating Plaintiff’s disability and functional limitations. See Galeck v. Berryhill, No. 2:18-cv-  
00131-JDE, 2018 WL 4961651, at \*6 (C.D. Cal. Oct. 12, 2018) (noting that “[t]he Ninth Circuit  
has made clear that ‘medical evaluations made after the expiration of a claimant’s insured status  
are relevant to an evaluation of the pre-expiration condition’”) (quoting Smith v. Bowen, 849  
F.2d 1222, 1225 (9th Cir. 1988)).

1 365. Plaintiff also took narcotic pain medication for her back pain, including  
2 hydrocodone (Norco) and Valium. Tr. 311-12, 323, 354-56, 365-66. The Court  
3 finds that such treatment, which increased in severity, is not conservative or  
4 routine. See, e.g., Silva v. Comm’r of Soc. Sec. Admin., No. SA CV 18-1244-E,  
5 2019 WL 653089, at \*10 (C.D. Cal. Feb. 15, 2019) (rejecting ALJ’s finding of  
6 “conservative treatment” where the plaintiff engaged in “physical therapy,  
7 narcotic pain medication and multiple epidural injections”).

8       Second, the record does not support the ALJ’s finding that Plaintiff’s exam  
9 findings contradict Dr. Hakimi’s assessments. The ALJ reviewed Plaintiff’s  
10 medical records, and despite acknowledging “some findings of concern,” such as  
11 skin lesions and an MRI of the cervical spine with positive findings, the ALJ  
12 determined that the record shows “many normal and mild exam findings.” Tr. 22-  
13 23. In reaching this conclusion, however, the ALJ ignores or otherwise dismisses  
14 medical records and treatment notes that indicate Plaintiff’s impairments were  
15 more serious. Id. For example, Plaintiff tested positive for straight leg raise tests,  
16 both on her left and right legs, on several occasions in 2015 and 2016. Tr. 287, 311,  
17 351, 354, 369. Plaintiff’s exams further indicate tenderness and decreased  
18 sensation, strength, and range of motion in her left upper and lower extremities and  
19 lumbar and cervical spines throughout the relevant period. Tr. 287, 293, 307, 311,  
20 327, 351, 354, 369, 401, 627. And, in addition to the MRI that found moderate right  
21 neural foraminal stenosis and moderate to severe left neural foraminal stenosis in  
22 Plaintiff’s cervical spine, it also appears that MRIs performed in April 2015 found  
23 Plaintiff had an impingement of the supraspinatus junction with tendonitis in her  
24 left shoulder and multilevel disc loss in her lumbosacral spine. Tr. 291, 296-97.  
25 Taken together, Plaintiff’s exam findings, which support her diagnoses of  
26 degenerative disc disease, spinal stenosis, and sciatica in the record, similarly  
27 support Dr. Hakimi’s findings that Plaintiff had severe neck and back pain with left  
28

1 sciatica requiring functional limitations. Tr. 296-97, 348, 374, 377, 382, 385, 400,  
2 635, 639.

3 Furthermore, the ALJ largely disregarded exam findings that Plaintiff  
4 experienced blood and skin issues during the relevant period. Tr. 19, 23. In 2017,  
5 Plaintiff had skin lesions in her bilateral upper extremities and bleeding under her  
6 skin. Tr. 385, 400-02, 656. Plaintiff's medical record also reflects that she was  
7 initially diagnosed with multiple myeloma, but a later diagnosis indicated that, at  
8 the least, she had smoldering multiple myeloma. Tr. 385, 430-32, 438, 642.  
9 Finally, as for Dr. Hakimi's assessments regarding Plaintiff's mental limitations,  
10 the ALJ similarly only considered Plaintiff's "many normal Mental Status  
11 Examinations" in the record and failed to address findings in the record that  
12 Plaintiff had anxiety and depression, for which she took medication. Tr. 19, 24,  
13 293, 337-40, 372-73, 375, 400, 648-49, 662, 668-69. Accordingly, because the ALJ  
14 did not properly consider or discuss the aforementioned evidence that is consistent  
15 with the limitations assessed by Dr. Hakimi, the ALJ's rejection of Dr. Hakimi's  
16 opinions is not supported by substantial evidence.

17 The ALJ's remaining reason for assigning Dr. Hakimi's opinions little  
18 weight—his lack of familiarity with the Administration's "precise disability  
19 guidelines"—is also rejected. An ALJ may consider a physician's familiarity with  
20 the Administration's "disability programs and their evidentiary requirements"  
21 when evaluating a medical opinion. 20 C.F.R. §§ 404.1527(c)(6), 416.927(c)(6). In  
22 this case, however, the ALJ does not provide any factual support for her conclusory  
23 statement that Dr. Hakimi's opinions reflect a lack of familiarity of the disability  
24 guidelines. See Tr. 25. Rather, the ALJ found that Dr. Hakimi limited Plaintiff to  
25 "a less than sedentary exertional level" and assessed a variety of functional  
26 limitations, including limitations in her ability to sit and stand/walk during an eight-  
27 hour workday, her capacity to maintain concentration and handle stress, and  
28 postural limitations about climbing, reaching, handling, fingering, pushing, and

1 pulling. Id. Such functional limitations reflect some familiarity and understanding  
2 of the Administration’s guidelines. As such, the Court finds that the ALJ’s reason  
3 for rejecting Dr. Hakimi’s assessments for lack of familiarity with the disability  
4 guidelines is not supported by substantial evidence.

5 Accordingly, for the reasons discussed above, the Court finds that the ALJ’s  
6 rejection of Dr. Hakimi’s opinions was not supported by specific and legitimate  
7 reasons or substantial evidence in the record. As such, the Court finds that remand  
8 for further proceedings is appropriate here.

9 **IV. CONCLUSION**

10 Because the Commissioner’s decision is not supported by substantial  
11 evidence, IT IS HEREBY ORDERED that the Commissioner’s decision is  
12 **REVERSED** and this case is **REMANDED** for further administrative proceedings  
13 under sentence four of 42 U.S.C. § 405(g). See Garrison, 759 F.3d at 1009  
14 (holding that under sentence four of 42 U.S.C. § 405(g), “[t]he court shall have  
15 power to enter . . . a judgment affirming, modifying, or reversing the decision of the  
16 Commissioner . . . , with or without remanding the cause for a rehearing”) (citation  
17 and internal quotation marks omitted).

18 IT IS SO ORDERED.

19  
20 DATED: 9/28/20



21 \_\_\_\_\_  
22 HONORABLE SHASHI H. KEWALRAMANI  
23 United States Magistrate Judge  
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