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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MOLLY LO,	)	Case No.: 1:16-cv-0610 - JLT
Plaintiff,	)	ORDER REMANDING THE ACTION PURSUANT
v.	)	TO SENTENCE FOUR OF 42 U.S.C. § 405(g)
NANCY A. BERRYHILL <sup>1</sup> ,	)	ORDER DIRECTING ENTRY OF JUDGMENT IN
Acting Commissioner of Social Security,	)	FAVOR OF PLAINTIFF MOLLY LO AND
Defendant.	)	AGAINST DEFENDANT NANCY BERRYHILL,
	)	ACTING COMMISSIONER OF SOCIAL
	)	SECURITY

Molly Lo asserts she is entitled to disability insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act. Plaintiff argues the administrative law judge erred in evaluating the record and seeks judicial review of the decision to deny her applications for benefits. Because the ALJ erred in evaluating the medical record, the matter is **REMANDED** for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

**PROCEDURAL HISTORY**

Plaintiff filed her applications for benefits on April 25, 2012, alleging disability beginning on January 1, 2012. (Doc. 9-3 at 20) The Social Security Administration denied Plaintiff’s applications at both the initial level and upon reconsideration. (*See generally* Doc. 9-4) After requesting a hearing,

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<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substitutes Nancy A. Berryhill for her predecessor, Carolyn W. Colvin, as the defendant.

1 Plaintiff testified before an ALJ on July 24, 2014. (Doc. 9-3 at 36) The ALJ determined Plaintiff was  
2 not disabled and issued an order denying benefits on September 16, 2014. (*Id.* at 17-29) The Appeals  
3 Council denied Plaintiff’s request for review of the decision on August 25, 2015. (*Id.* at 2-4)  
4 Therefore, the ALJ’s determination became the final decision of the Commissioner of Social Security  
5 (“Commissioner”).

#### 6 **STANDARD OF REVIEW**

7 District courts have a limited scope of judicial review for disability claims after a decision by  
8 the Commissioner to deny benefits under the Social Security Act. When reviewing findings of fact,  
9 such as whether a claimant was disabled, the Court must determine whether the Commissioner’s  
10 decision is supported by substantial evidence or is based on legal error. 42 U.S.C. § 405(g). The ALJ’s  
11 determination that the claimant is not disabled must be upheld by the Court if the proper legal  
12 standards were applied and the findings are supported by substantial evidence. *See Sanchez v. Sec’y of*  
13 *Health & Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987).

14 Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a  
15 reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.  
16 389, 401 (1971) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197 (1938)). The record as a whole  
17 must be considered, because “[t]he court must consider both evidence that supports and evidence that  
18 detracts from the ALJ’s conclusion.” *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985).

#### 19 **DISABILITY BENEFITS**

20 To qualify for benefits under the Social Security Act, Plaintiff must establish he is unable to  
21 engage in substantial gainful activity due to a medically determinable physical or mental impairment  
22 that has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C.  
23 § 1382c(a)(3)(A). An individual shall be considered to have a disability only if:

24 his physical or mental impairment or impairments are of such severity that he is not only  
25 unable to do his previous work, but cannot, considering his age, education, and work  
26 experience, engage in any other kind of substantial gainful work which exists in the  
27 national economy, regardless of whether such work exists in the immediate area in which  
he lives, or whether a specific job vacancy exists for him, or whether he would be hired if  
he applied for work.

28 42 U.S.C. § 1382c(a)(3)(B). The burden of proof is on a claimant to establish disability. *Terry v.*

1 *Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990). If a claimant establishes a prima facie case of disability,  
2 the burden shifts to the Commissioner to prove the claimant is able to engage in other substantial  
3 gainful employment. *Maounois v. Heckler*, 738 F.2d 1032, 1034 (9th Cir. 1984).

#### 4 ADMINISTRATIVE DETERMINATION

5 To achieve uniform decisions, the Commissioner established a sequential five-step process for  
6 evaluating a claimant’s alleged disability. 20 C.F.R. §§ 404.1520, 416.920(a)-(f). The process  
7 requires the ALJ to determine whether Plaintiff (1) engaged in substantial gainful activity during the  
8 period of alleged disability, (2) had medically determinable severe impairments (3) that met or equaled  
9 one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P, Appendix 1; and whether  
10 Plaintiff (4) had the residual functional capacity (“RFC”) to perform to past relevant work or (5) the  
11 ability to perform other work existing in significant numbers at the state and national level. *Id.* The  
12 ALJ must consider testimonial and objective medical evidence. 20 C.F.R. §§ 404.1527, 416.927.

#### 13 **A. Relevant Medical Evidence<sup>2</sup>**

14 In May 2011, Plaintiff went to the Kings Winery Medical Clinic, complaining of pain and  
15 “feeling down.” (Doc. 9-10 at 35) Plaintiff reported she “was feeling depressed about 5 years and it  
16 got worse gradually,” and had feelings of hopelessness and worthlessness. (*Id.* at 34) Plaintiff said she  
17 “became withdrawn” and “had no motivation to do things.” (*Id.*) Plaintiff reported hearing voices and  
18 feeling suicidal, though she did not have suicidal ideations at the appointment. (*Id.*) Further, Plaintiff  
19 said she “had difficulty [with] concentration and remembering things.” (*Id.*) During the examination,  
20 she appeared sad and tearful. (*Id.*) Plaintiff was diagnosed with major depressive disorder and  
21 received prescriptions for Prozac and Zyprexa. (*Id.*)

22 Treatment notes from Kings Winery indicate that at a follow-up appointment in August 2011,  
23 Plaintiff reported she “took medications regularly, however she was still feeling depressed.” (Doc. 9-  
24 10 at 33) As a result, the doctor increased the dosage of her prescription for Prozac. (*Id.*) Plaintiff’s  
25 medications were altered again in October 2011, when she reported that she took the medication  
26 “regularly,” but “was feeling hopeless, worthless...[and] tired.” (*Id.* at 29) The following month,

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27  
28 <sup>2</sup> While the Court has reviewed the entirety of the medical record, Plaintiff challenges the evaluation of medical evidence related to her mental impairments. Accordingly, the summary excludes any evidence related to her physical impairments.

1 Plaintiff reported that “she was still having insomnia.” (*Id.* at 27) However, her mood was normal, she  
2 had a pleasant demeanor, and she did not have any hallucinations. (*Id.*)

3 Plaintiff had a comprehensive assessment for services from Fresno County Department of  
4 Behavioral Health on January 12, 2012. (Doc. 9-10 at 5-14) Plaintiff reported she had “frequent  
5 nightmares about unknown people who will hurt [her],” heard voices, and “saw black shadows.” (*Id.* at  
6 5) Plaintiff stated she had “problems staying asleep and [awoke] easily due to the frequent nightmares.”  
7 (*Id.* at 9) She reported she was on psychotropic medications that were prescribed by a psychiatrist from  
8 Kings Winery Clinic. (*Id.* at 8) In addition, Plaintiff said she had “poor memory and concentration.”  
9 (*Id.* at 12) Doan Truong, a social worker, observed that Plaintiff appeared “[d]epressed, irritable, ...  
10 and worried,” and “[s]he cried several times during the interview.” (*Id.* at 9, 12) Mr. Truong believed  
11 Plaintiff had fair immediate and short term memory, poor insight, poor judgment, and fair abstraction.  
12 (*Id.* at 10) Mr. Truong recommended Plaintiff be admitted to the County’s Prevention Early  
13 Intervention program, through which Plaintiff began meeting with a social worker. (*See id.* at 13, 19)

14 Dr. Helen Patterson completed a mental residual functional capacity assessment for Plaintiff’s  
15 current abilities on July 14, 2012. (Doc. 9-4 at 41-43) Dr. Patterson opined Plaintiff was “[n]ot  
16 significantly limited” with the ability to understand, remember, and carry out “very short and simple  
17 instructions,” but was “[m]oderately limited” with detailed instructions. (*Id.* at 41-42) She believed  
18 that Plaintiff had moderate limitations with maintaining attention and concentration, completing a  
19 normal workday and workweek, interacting appropriately with the public, and getting along with  
20 coworkers or peers. (*Id.* at 42)

21 On August 7, 2012, Plaintiff was admitted to the hospital on a 5150 hold, “as a danger to self  
22 and danger to others.” (Doc. 9-11 at 31, 32) Plaintiff said “she [was] very depressed and suicidal and  
23 that she [needed] protection... in order to keep herself safe.” (*Id.* at 33) Dr. Dwight Sievert observed  
24 that Plaintiff was “oriented and able to accurately name the day, date and hospital.” (*Id.* at 34) In  
25 addition, Dr. Sievert opined Plaintiff’s “[i]nsight, judgment and impulse appear[ed] to be reasonably  
26 well preserved with the exception of impulse control in the area of self harm.” (*Id.*) Plaintiff was  
27 discharged on August 10, when Plaintiff no longer was saying she was dangerous to herself or others,  
28 and appeared “calm, reasonable and... genuine in expression of safety.” (*Id.* at 37)

1 In December 2012, Plaintiff had Mental Health Assessment with Fresno County. (Doc. 9-11 at  
2 41-45) Plaintiff reported she was “not motivated to do anything” and she would “sit and watch tv all  
3 day long.” (*Id.* at 41) Kong Yang, a MSW student intern, observed that Plaintiff appeared anxious/  
4 tense, worried/fearful, and sad/depressed. (*Id.* at 44) Further, Plaintiff had illogical thought process  
5 and poor attention and concentration. (*Id.*)

6 Plaintiff was admitted to Kaweah Delta Mental Health Hospital on a Welfare and Institutions  
7 Code section 5150 hold on January 8, 2013. (Doc. 9-11 at 50) Plaintiff admitted “to feeling depressed,  
8 hopeless, worthless and [had] suicidal ideation with a plan to either cut her wrists or[] her neck and...  
9 plans of hanging herself.” (*Id.*) The following day, she appeared “depressed, withdrawn/isolated” and  
10 had a decreased level of attention. (*Id.* at 52) Plaintiff’s insight and judgment were poor, but her  
11 thought process was “[l]inear and logical for short conversations.” (*Id.*) She remained hospitalized  
12 until January 12, 2013. (*Id.* at 64)

13 Dr. M. Salib completed a mental residual functional capacity assessment for Plaintiff’s current  
14 abilities on March 20, 2013. (Doc. 9-5 at 25-27) Dr. Salib opined Plaintiff had understanding and  
15 memory limitations, but was “[n]ot significantly limited” with the ability to understand, remember, and  
16 carry out “very short and simple instructions.” (*Id.* at 26) In addition, Dr. Salib determined Plaintiff  
17 had moderate concentration and attention limitations, and moderate limitations with social interaction.  
18 (*Id.* at 26-27) Dr. Salib concluded: “The claimant retains adequate ability to complete tasks, to follow  
19 instructions w/o additional assistance, to maintain adequate attention, concentration, and persistence,  
20 and to work at adequate pace to sustain a normal workday and workweek, as her physical condition  
21 permits.” (*Id.* at 27)

22 Dr. Maximo Parayno performed a psychiatric evaluation on April 3, 2014. (Doc. 9-12 at 90-93)  
23 Dr. Parayno observed that Plaintiff “was disoriented and did not know the day of the week, month,  
24 year, her complete home address, home phone, and even her own date of birth.” (*Id.* at 92) He tested  
25 Plaintiff’s memory by giving her a 7-digit number, and Plaintiff “was unable to recall any of the  
26 numbers.” (*Id.*) In addition, Plaintiff “was asked to do the serial sevens test involving subtracting 7  
27 from 100 serial and [was] unable to do so.” (*Id.*) Dr. Parayno opined that “her inability to perform  
28 both the forward digit span and serial sevens tests indicated impaired concentrations and attention

1 span.” (*Id.*) Because Plaintiff was unable to identify the birthdates of any of her children, Dr. Parayno  
2 opined Plaintiff had an “impaired remote memory.” (*Id.*) Likewise, when Plaintiff “was given 5 items  
3 to recall such as bread, milk, beef, grapes, and corn,... she remembered none of the 5 items” after 2  
4 minutes, “which indicated impaired recent memory.” (*Id.*) Dr. Parayno opined Plaintiff’s insight and  
5 judgment were “fair” because she “realizes she has a mental disorder and needed treatment.” (*Id.*) He  
6 found Plaintiff’s “cognitive parameters such as memory, concentration and attention span appeared  
7 impaired.” (*Id.*) Dr. Parayno concluded Plaintiff “appear[ed] disabled from the psychiatric evaluation  
8 and unable to engage in any substantial gainful activity.” (*Id.* at 93)

9         On April 7, 2014, Dr. Parayno completed a mental residual functional capacity statement. (Doc.  
10 9-12 at 94-97) He opined Plaintiff had “impaired memory, concentration & attention span.” (*Id.* at 97)  
11 Dr. Parayno indicated Plaintiff’s impairments precluded her ability to understand and remember very  
12 short and simple or detailed instructions, maintain attention and concentration, perform activities within  
13 a schedule, sustain an ordinary routine without special supervision, complete a normal workday and  
14 workweek without interruption “for 15% or more of an 8-hour workday.” (*Id.* at 95-96) He opined that  
15 Plaintiff was likely to be off task for “more than 30%” of a workday due to her physical and mental  
16 limitations. (*Id.* at 95)

17         La Hang, a social worker and mental health clinician, completed a mental residual functional  
18 capacity form on May 13, 2014. (Doc. 9-12 at 103-106) She opined Plaintiff was moderately limited  
19 with the ability to understand, remember, and carry out short and simple instructions. (*Id.* at 104)  
20 According to Ms. Hang, Plaintiff had marked limitations with the ability to understand, remember, and  
21 carry out detailed instruction, noting that Plaintiff “present[ed] w/ poor attention/concentration and  
22 slow processing as evidence[d] by preoccupied worries, poor memory, and negative self-talk.” (*Id.*) In  
23 addition, she believed Plaintiff exhibited “impaired judgment and irrational thought process as  
24 evidence[d] by past suicidal attempts and ideations.” (*Id.*) Further, Ms. Hang opined Plaintiff had  
25 marked ability to respond to changes in the workplace, to set goals or make plans independent of  
26 others, to accept instructions, to get along with co-workers or peers, to interact with the general public,  
27 or to complete a normal workday while maintaining a consistent pace. (*Id.* at 104-105)

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1 **B. Administrative Hearing Testimony**

2 Plaintiff testified with the assistance of an interpreter at the hearing on July 24, 2014. (Doc. 9-3  
3 at 37) She stated that she felt scared, worried, and depressed, and she had crying spells “about two or  
4 three times per week.” (*Id.* at 47) In addition, Plaintiff said that “about two or three times per week”  
5 she heard voices calling her name. (*Id.* at 54) She also reported that she would see shadows and feel  
6 like someone was standing close beside her, when no one was there. (*Id.* at 55)

7 Plaintiff said her “depression causes... memory loss, and [makes her] unable to recognize things  
8 and organize things,” and to not complete tasks. (Doc. 9-3 at 46) She reported that she was taking  
9 medication for depression, which helped “[j]ust a little bit.” (*Id.* at 45) In addition, Plaintiff reported  
10 she went to therapy once a week to help with her symptoms. (*Id.* at 47)

11 She stated that each day she would “only take ... medication and stay home and lie down.”  
12 (Doc. 9-3 at 53) Plaintiff explained that she would wake up, clean herself, brush her teeth, and take her  
13 medication. (*Id.*) She reported that she did not make her bed or do any chores around the house do to  
14 her physical pain. (*Id.*)

15 **C. The ALJ’s Findings**

16 Pursuant to the five-step process, the ALJ determined Plaintiff did not engage in substantial  
17 gainful activity after the alleged onset date of January 1, 2012. (Doc. 9-3 at 22) At step two, the ALJ  
18 found Plaintiff’s severe impairments included: “carpal tunnel syndrome bilaterally, and affective  
19 disorder.” (*Id.*) At step three, the ALJ determined Plaintiff did not have an impairment, or  
20 combination of impairments, that met or medically equaled a Listing. (*Id.* at 22-23) Next, the ALJ  
21 determined:

22 [T]he claimant has the residual functional capacity to perform light work as defined in  
23 20 CFR 404.1567(b) and 426.967(b), except she should never climb ladders, ropes, or  
24 scaffolds, or work at unprotected heights or around moving mechanical parts. She can  
25 occasionally climb ramps and stairs, balance, stoop, kneel, crouch, and crawl;  
frequently bilaterally handle, finger, and feel. In addition, she is limited to performing  
simple routine repetitive tasks, and using judgment related to simple work related  
decisions, and capable of occasional interaction with coworkers and the public.

26 (*Id.* at 24) With these limitations, the ALJ concluded Plaintiff was not able to perform any past  
27 relevant work. (*Id.* at 27) However, the ALJ concluded, “Considering the claimant’s age, education,  
28 work experience, and residual functional capacity, there are jobs that exist in significant numbers in the

1 national economy that the claimant can perform.” (*Id.* at 28) Therefore, the ALJ found Plaintiff was  
2 not disabled as defined by the Social Security Act. (*Id.* at 29)

### 3 **DISCUSSION AND ANALYSIS**

4 Plaintiff contends the ALJ erred in rejecting the opinion of Dr. Parayno. (Doc. 15 at 15-21) On  
5 the other hand, the Commissioner contends the ALJ “gave good reasons” for rejecting the opinion.  
6 (Doc. 22 at 6 [emphasis omitted]; *see also id.* at 5-9). According, Defendant contends the ALJ’s  
7 decision is “free of reversible legal error.” (*Id.* at 11)

#### 8 **A. ALJ’s Evaluation of the Medical Evidence**

9 In this circuit, the courts distinguish the opinions of three categories of physicians: (1) treating  
10 physicians; (2) examining physicians, who examine but do not treat the claimant; and (3) non-  
11 examining physicians, who neither examine nor treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830  
12 (9th Cir. 1996). In general, the opinion of a treating physician is afforded the greatest weight but it is  
13 not binding on the ultimate issue of a disability. *Id.*; *see also* 20 C.F.R. § 404.1527(d)(2); *Magallanes*  
14 *v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Further, an examining physician’s opinion is given more  
15 weight than the opinion of non-examining physician. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir.  
16 1990); 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

17 A physician’s opinion is not binding upon the ALJ, and may be discounted whether or not  
18 another physician contradicts the opinion. *Magallanes*, 881 F.2d at 751. An ALJ may reject an  
19 *uncontradicted* opinion of a treating or examining medical professional only by identifying “clear and  
20 convincing” reasons. *Lester*, 81 F.3d at 831. In contrast, a *contradicted* opinion of a treating or  
21 examining professional may be rejected for “specific and legitimate reasons that are supported by  
22 substantial evidence in the record.” *Id.*, 81 F.3d at 830. When there is conflicting medical evidence, “it  
23 is the ALJ’s role to determine credibility and to resolve the conflict.” *Allen v. Heckler*, 749 F.2d 577,  
24 579 (9th Cir. 1984). The ALJ’s resolution of the conflict must be upheld when there is “more than one  
25 rational interpretation of the evidence.” *Id.*; *see also Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
26 1992) (“The trier of fact and not the reviewing court must resolve conflicts in the evidence, and if the  
27 evidence can support either outcome, the court may not substitute its judgment for that of the ALJ”).  
28 In this case, the opinion of Dr. Parayno was contradicted by non-examining physicians, Drs. Salib and



1 Patterson. Consequently, the ALJ was required to set forth specific and legitimate reasons for rejecting  
2 the opinions articulated by Dr. Parayno.

3 The ALJ summarized the conclusions of Dr. Parayno and explained the weight given to the  
4 opinion as follows:

5 The mental status examination showed memory, concentration, and attention span were  
6 impaired, but judgment and insight were fair. (Exhibit 12F, p. 4) Dr. Parayno diagnosed  
7 major depressive disorder, recurrent and severe without psychotic features, and chronic  
8 post-traumatic stress disorder and opined the claimant was disabled from the psychiatric  
9 evaluation and unable to engage in any substantial gainful activity. (Exhibit 12 F, p.5)  
10 On April 7, 2013, Dr. Parayno also submitted a mental residual functional capacity  
11 statement with a similar opinion. (Exhibit 13 F)

12 Under Social Security Ruling (SSR) 96-5p, a finding of disability is an issue specifically  
13 reserved to the Commissioner. Nevertheless, in making my decision, I still considered  
14 the opinions of Dr. Parayno and gave them little weight because it is not supported by  
15 and consistent with the overall medical evidence, which showed fair insight and  
16 judgment (Exhibits 7F, p. 10 and 10F, p. 18).

17 (Doc. 9-3 at 30) Plaintiff argues these reasons do not support the decision to reject the limitations  
18 assessed by Dr. Parayno. (Doc. 15 at 15-21)

19 1. Issue reserved for the Commissioner

20 The determination of whether a claimant is disabled is reserved for the Commissioner, and  
21 statements “by a medical source that [a claimant] is ‘disabled’ or ‘unable to work’” “are not medical  
22 opinions.” 20 C.F.R. §§ 404.1527(e), 416.927(e). Previously, this Court explained, “[A]n ALJ is not  
23 obligated to provide detailed reasons for rejecting a medical expert’s opinion regarding the ultimate  
24 question of disability.” *James v. Astrue*, 2012 U.S. Dist. LEXIS 139929, at \* 25 (E.D. Cal. Sept. 27,  
25 2012) (citing *Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1985)). Dr. Parayno’s belief that Plaintiff  
26 was “disabled” is clearly a statement “that would direct the determination or decision of disability.” See  
27 20 C.F.R. §§ 404.1527(e), 416.927(e). Accordingly, the ALJ’s decision to give “little weight” to this  
28 statement of Dr. Parayno was proper. However, it does not support the decision to give little weight to  
the specific limitations identified by Dr. Parayno in the examination findings or mental residual  
functional capacity assessment.

2. Inconsistencies with the overall record

The Ninth Circuit has determined an opinion may be rejected where there are internal  
inconsistencies within a physician’s report. *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595,

1 603 (9th Cir. 1999). Further, an ALJ may reject limitations “unsupported by the record as a whole.”  
2 *Mendoza v. Astrue*, 371 Fed. Appx. 829, 831-32 (9th Cir. 2010) (citing *Batson v. Comm’r of the Soc.*  
3 *Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2003)).

4 When an ALJ believes a physician’s opinion is unsupported by the objective medical evidence,  
5 the ALJ has a burden to “set[] out a detailed and thorough summary of the facts and conflicting clinical  
6 evidence, stating his interpretation thereof, and making findings.” *Cotton v. Bowen*, 799 F.2d 1403,  
7 1408 (9th Cir. 1986). The Ninth Circuit explained: “To say that medical opinions are not supported by  
8 sufficient objective findings or are contrary to the preponderant conclusions mandated by the objective  
9 findings does not achieve the level of specificity our prior cases have required.” *Embrey v. Bowen*, 849  
10 F.2d 418, 421-22 (9th Cir. 1988).

11 The ALJ identified two treatment notes in which Plaintiff “showed fair insight and judgment” to  
12 support his decision to reject the opinions of Dr. Parayno. (Doc. 9-3 at 26, citing Exh. 7F, p. 10 [Doc.  
13 9-11 at 34] and Exh. 10F, p. 18 [Doc. 9-12 at 19]<sup>3</sup>) However, the ALJ does not explain how these  
14 findings related to Plaintiff’s insight and judgment are inconsistent with the limitations assessed by Dr.  
15 Parayno. (See Doc. 9-12 at 92) Indeed, Dr. Parayno also opined Plaintiff’s insight and judgment were  
16 “fair.” (*Id.*) Thus, the conclusions of Dr. Parayno related to Plaintiff’s insight and judgment were  
17 consistent with the treatment notes identified by the ALJ. Dr. Parayno also opined that Plaintiff’s  
18 “cognitive parameters such as memory, concentration and attention span appeared impaired,” despite  
19 her fair insight and judgment. (*Id.*)

20 Because the ALJ failed to identify specific inconsistencies between the opinions of Dr. Parayno  
21 and the “overall medical evidence,” this reason cannot support the decision to give less weight to the  
22 limitations assessed by Dr. Parayno related to Plaintiff’s memory, concentration, attention span, and  
23 ability to sustain a workday or workweek.<sup>4</sup>

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26 <sup>3</sup> Notably, the page identified by the ALJ appears to be incorrect, as the treatment notes on page do not refer to  
Plaintiff’s insight and judgment. However, Exhibit 10F, p. 21 [Doc. 9-12 at 22] includes findings that Plaintiff’s judgment  
and insight were fair, and her attention and concentration were poor.

27 <sup>4</sup> Defendant identifies additional medical evidence in the record, which the Commissioner argues supports the  
ALJ’s decision to reject Dr. Parayno’s opinions. (See Doc. 22 at 7-8) However, when evaluating the decision of an ALJ, the  
28 reviewing Court “is constrained to review the reasons the ALJ asserts.” *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir.  
2003) (finding the court erred in affirming the ALJ’s decision “based on evidence that the ALJ did not discuss”); see also  
*Stout v. Comm’r Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006) (the Court is “constrained to review the reasons the

1 **B. Remand is Appropriate**

2 The decision whether to remand a matter pursuant to sentence four of 42 U.S.C. § 405(g) or to  
3 order immediate payment of benefits is within the discretion of the district court. *Harman v. Apfel*,  
4 211 F.3d 1172, 1178 (9th Cir. 2000). Except in rare instances, when a court reverses an administrative  
5 agency determination, the proper course is to remand to the agency for additional investigation or  
6 explanation. *Moisa v. Barnhart*, 367 F.3d 882, 886 (9th Cir. 2004) (citing *INS v. Ventura*, 537 U.S.  
7 12, 16 (2002)). Generally, an award of benefits is directed when:

- 8 (1) the ALJ has failed to provide legally sufficient reasons for rejecting such evidence,  
9 (2) there are no outstanding issues that must be resolved before a determination of  
10 disability can be made, and (3) it is clear from the record that the ALJ would be required  
11 to find the claimant disabled were such evidence credited.

12 *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). In addition, an award of benefits is directed  
13 where no useful purpose would be served by further administrative proceedings, or where the record is  
14 fully developed. *Varney v. Sec’y of Health & Human Serv.*, 859 F.2d 1396, 1399 (9th Cir. 1988).

15 Here, the ALJ failed to identify legally sufficient reasons for rejecting the limitations assessed  
16 by Dr. Parayno. Therefore, the matter should be remanded for the ALJ to re-evaluate the medical  
17 evidence to determine Plaintiff’s mental residual functional capacity. *See Moisa* , 367 F.3d at 886.

18 **CONCLUSION AND ORDER**

19 For the reasons set forth above, the Court finds the ALJ erred in evaluating the medical  
20 evidence, and the decision cannot be upheld by the Court. *See Sanchez*, 812 F.2d at 510. Based upon  
21 the foregoing, the Court **ORDERS**:

- 22 1. The matter is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further  
23 proceedings consistent with this decision; and

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28 ALJ asserts”). Accordingly, the Commissioner is unable to salvage the ALJ’s decision with evidence the ALJ did not  
identify in his decision.

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2. The Clerk of Court **IS DIRECTED** to enter judgment in favor of Plaintiff Molly Lo and against Defendant, Nancy A. Berryhill, Acting Commissioner of Social Security.

IT IS SO ORDERED.

Dated: July 27, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE