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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER JOSEPH MCCLURE,  
Plaintiff,  
v.  
NANCY A. BERRYHILL, Commissioner  
of Social Security,  
Defendant.

Case No.: 16cv2515-JLS (JLB)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION; DENYING  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT;  
GRANTING PLAINTIFF’S MOTION  
FOR SUMMARY JUDGMENT**

(ECF No. 25)

Presently before the Court is Plaintiff’s Motion for Summary Judgment and Defendant’s Motion for Summary Judgment, (ECF Nos. 19, 21). Magistrate Judge Robert N. Block has issued a Report and Recommendation, (“R&R”, ECF No. 25), recommending that Plaintiff’s Motion for Summary Judgment be granted, Defendant’s Cross-Motion for Summary Judgment be denied, and that Judgment be entered reversing the decision of the Commissioner and remanding this matter for further administrative proceedings. Having reviewed the Parties’ motions, Judge Block’s R&R, and the underlying Administrative Record, the Court **ADOPTS** Judge Blocks Report and Recommendation in its entirety.

1 **BACKGROUND**

2 Judge Block’s R&R contains a thorough and accurate recitation of the factual and  
3 procedural histories underlying the instant Motions for Summary Judgment. (See R&R 2–  
4 3.)<sup>1</sup> This Order incorporates by reference the background as set forth therein.

5 **LEGAL STANDARD**

6 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district  
7 court’s duties in connection with a magistrate judge’s report and recommendation. The  
8 district court must “make a de novo determination of those portion of the report to which  
9 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or  
10 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United*  
11 *States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United States v. Remsing*, 874 F.2d 614,  
12 617 (9th Cir. 1989). However, in the absence of timely objection, the Court “need only  
13 satisfy itself that there is no clear error on the face of the record in order to accept the  
14 recommendation.” Fed. R. Civ. P. 72 advisory committee’s note to 1983 amendment  
15 (citing *Campbell v. U.S. Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)); *see also United*  
16 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (“[T]he district judge must  
17 review the magistrate judge’s findings and recommendations de novo *if objection is made*,  
18 but not otherwise.”).

19 **ANALYSIS**

20 In this present case, neither party has filed objections to Magistrate Judge Block’s  
21 R&R. (See R&R 8 (objections due by May 1, 2018).) Having reviewed the R&R, the  
22 Court finds that it is thorough, well-reasoned, and contains no clear error.

23 In this matter, the Administrative Law Judge (“ALJ”) rejected the opinion of  
24 Plaintiff’s treating psychiatrist, Dr. Le. (R&R 3.) In his R&R, Judge Block determined  
25 the ALJ erred in this decision. The Court agrees the ALJ’s determination did not provide  
26 legally sufficient reasons to reject Dr. Le’s opinion. The ALJ rejected Dr. Le’s opinion  
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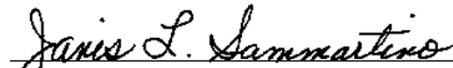
<sup>1</sup> Pin citations refer to the CM/ECF page numbers electronically stamped at the top of each page.

1 because it contradicted the medical evidence of record. (*Id.* at 6.) However, the ALJ failed  
2 to pinpoint the medical evidence of record that allegedly contradicted Dr. Le’s opinion.  
3 (*Id.*) The ALJ also rejected Dr. Le’s opinion because it was inconsistent with the other  
4 experts’ opinions. (*Id.*) Any inconsistency between Dr. Le’s opinion and the other experts’  
5 opinions only determined the standard to be applied to the ALJ’s reasons for not accepting  
6 Dr. Le’s opinion and did not itself constitute a legally sufficient reason for rejection. (*Id.*  
7 at 6–7.) The ALJ also rejected Dr. Le’s opinion because she did not take into account  
8 Plaintiff’s drug addiction and alcoholism history. (*Id.* at 8.) But, Dr. Le did take into  
9 account Plaintiff’s drug addiction and alcoholism history when she completed the Mental  
10 Impairment Questionnaire form and checked “No” to the question “If your patient’s  
11 impairments include alcohol or substance abuse, do alcohol or substance abuse contribute  
12 to any of your patient’s limitations set forth above?” (*Id.*) The Court agrees remanding  
13 for further administrative proceedings is appropriate because additional proceedings could  
14 remedy the defects in the ALJ’s decision. (*Id.* at 7.)

15 Accordingly, the Court hereby: (1) **ADOPTS** Magistrate Judge Block’s Report and  
16 Recommendation; (2) **GRANTS** Plaintiff’s Motion for Summary Judgment and **DENIES**  
17 Defendant’s Cross-Motion for Summary Judgment; and (3) **REMANDS** the case to the  
18 Social Security Administration for further proceedings. Because this concludes the  
19 litigation in this matter, the Clerk **SHALL** close the file.

20 **IT IS SO ORDERED.**

21 Dated: May 24, 2018

22   
23 Hon. Janis L. Sammartino  
24 United States District Judge  
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