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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 GERALDINE C. B., *as the heir and*  
11 *representative of the estate of*  
12 REYNALDO R. C.,

Plaintiff,

13 v.

14 KILOLO KIJAKAZI, *Acting*  
15 *Commissioner of Social Security,*

16 Defendant.

Case No.: 21-cv-1750-DEB

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT, DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT, AND  
REMANDING**

**[DKT. NOS. 16, 17]**

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18 **I. INTRODUCTION**

19 Plaintiff Geraldine C. B. ("Plaintiff"), the heir and representative of the estate of  
20 Claimant Reynaldo R. C. ("Claimant"), seeks review of the Commissioner of Social  
21 Security's denial of Disability Insurance Benefits.<sup>1</sup> Dkt. No. 1. The parties filed cross  
22 motions for summary judgment. Dkt. Nos. 16, 17, 18.

23 For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion for  
24 Summary Judgment, **DENIES** Defendant's Cross Motion for Summary Judgment, and  
25 **REMANDS** this matter for further proceedings consistent with this Order.  
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28 <sup>1</sup> Plaintiff is Claimant's widow and substituted as Plaintiff after Claimant passed away  
January 11, 2021. AR 112–15, 976.

1           **II. PROCEDURAL BACKGROUND**

2           Claimant applied for Disability Insurance Benefits alleging disability beginning  
3 June 19, 2018. AR 146–47.<sup>2</sup> The Social Security Administration (“SSA”) denied the  
4 application initially and on reconsideration. AR 76–80, 83–91. Plaintiff requested and  
5 received an Administrative Law Judge (“ALJ”) hearing, which the ALJ held on May 25,  
6 2021. AR 29–47. The ALJ issued a written decision finding Claimant not disabled.  
7 AR 15–28. The Appeals Counsel denied Plaintiff’s request for review (AR 1–6) and this  
8 case followed.

9           **III. SUMMARY OF ALJ’S DECISION**

10           The ALJ followed the five-step sequential evaluation process. *See* 20 C.F.R.  
11 § 404.1520(a)(4). At step one, the ALJ found Claimant had “not engaged in substantial  
12 gainful activity since June 19, 2018,” the alleged onset date. AR 17.

13           At step two, the ALJ found the following severe medically determinable  
14 impairments: carpal tunnel syndrome, liver disease secondary to alcohol abuse, and  
15 thrombosis. AR 18. The ALJ found Claimant’s hypertension, high cholesterol, ulcer,  
16 gastroesophageal reflux disease, and hearing loss were not severe. *Id.*

17           The ALJ also determined at step two that Claimant had medically determinable  
18 mental impairments (depression and anxiety) but they “did not cause more than minimal  
19 limitation in the [C]laimant’s ability to perform basic mental work activities and are  
20 therefore nonsevere.” *Id.* The ALJ evaluated the four mental functional areas, known as  
21 the “paragraph B” criteria,<sup>3</sup> and found Claimant had mild limitations in two areas:  
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24 <sup>2</sup> “AR” refers to the Administrative Record lodged on July 5, 2022. Dkt. No. 13. The  
25 Court’s citations to the AR use the page references on the original document rather than  
26 the page numbers designated by the Court’s case management/electronic case filing system  
27 (“CM/ECF”). For all other documents, the Court’s citations are to the page numbers affixed  
28 by the CM/ECF.

<sup>3</sup> These criteria are set forth in 20 C.F.R. § 416.920a(c)(2).

1 understanding, remembering, or applying information; and interacting with others. *Id.* The  
2 ALJ found no limitations in the other two areas: concentrating, persisting, or maintaining  
3 pace; and adapting or managing oneself. *Id.*

4 At step three, the ALJ found Claimant did not have an impairment or combination  
5 of impairments that met or medically equaled those in the Commissioner’s Listing of  
6 Impairments. AR 19.

7 Before proceeding to step four, the ALJ found Claimant had the residual functional  
8 capacity (“RFC”) to perform light work with the following limitations:

9 [Claimant] could occasionally lift and/or carry 20 pounds and frequently lift  
10 and/or carry 10 pounds; he could stand and/or walk six hours in an eight-hour  
11 workday; he could sit for six hours in an eight-hour workday; pushing and  
12 pulling was limited in both upper extremities to frequent, with the weights  
13 noted; postural limitations were occasionally climbing ramps and stairs, never  
14 climbing ladders, ropes, or scaffolds, frequently balancing, occasionally  
15 stooping, frequently kneeling, frequently crouching, and occasionally  
16 crawling; his manipulative activities were unlimited except frequently  
handling, feeling, and fingering; and avoid concentrated exposure to extreme  
cold, extreme heat, and vibration, and avoid all exposure to unprotected  
heights and dangerous, moving machinery.

17 AR 20.

18 At step four, the ALJ found Claimant could perform his past relevant work and,  
19 therefore, was not disabled. AR 23–24. The ALJ did not proceed to step five.

#### 20 **IV. STANDARD OF REVIEW**

21 The Court reviews the ALJ’s decision to determine whether the ALJ applied the  
22 proper legal standards and whether the decision is supported by substantial evidence.  
23 42 U.S.C. § 405(g); *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). Substantial  
24 evidence is “such relevant evidence as a reasonable mind might accept as adequate to  
25 support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (quoting  
26 *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). It is “more than a mere  
27 scintilla, but less than a preponderance . . . .” *Garrison v. Colvin*, 759 F.3d 995, 1009  
28 (9th Cir. 2014) (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007)).

1 The Court may not impose its own reasoning to affirm the ALJ’s decision. *Garrison*,  
2 759 F.3d at 1010. The Court “must consider the entire record as a whole and may not affirm  
3 simply by isolating a specific quantum of supporting evidence.” *Hill v. Astrue*, 698 F.3d  
4 1153, 1159 (9th Cir. 2012) (internal quotation marks and citation omitted). “[I]f evidence  
5 exists to support more than one rational interpretation, [the Court] must defer to the [ALJ’s]  
6 decision.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).

7 Plaintiff filed his claim after March 27, 2017; therefore, the 2017 amendments  
8 governing medical opinions apply. *Woods v. Kijakazi*, 32 F.4th 785, 789 (9th Cir. 2022).  
9 Under those amendments, the SSA “will not defer or give any specific evidentiary weight,  
10 including controlling weight, to any medical opinion(s) or prior administrative medical  
11 finding(s), including those from . . . medical sources.” 20 C.F.R. § 404.1520c(a). Instead,  
12 all medical opinions are evaluated based on supportability, consistency, relationship with  
13 the claimant, specialization, and other factors. *Id.* § 404.1520c(c). The SSA must to explain  
14 how it considered the most important factors, supportability and consistency, but is not  
15 required to explain how it considered the other factors. *Id.* § 404.1520c(b)(2).  
16 Supportability means a medical source must support the opinion by explaining the  
17 “relevant . . . objective medical evidence.” *Woods*, 32 F.4th at 791–92. “Consistency means  
18 the extent to which a medical opinion is consistent . . . with the evidence from other medical  
19 sources and nonmedical sources in the claim.” *Id.* (internal citations omitted).

20 “Even under the new regulations, an ALJ cannot reject an examining or treating  
21 doctor’s opinion as unsupported or inconsistent without providing an explanation  
22 supported by substantial evidence.” *Id.* The ALJ must “articulate . . . how persuasive” the  
23 ALJ finds “all of the medical opinions.” 20 C.F.R. § 404.1520c(b).

24 The Court will not reverse for harmless error. *Marsh v. Colvin*, 792 F.3d 1170, 1173  
25 (2015) (“ALJ errors in social security cases are harmless if they are inconsequential to the  
26 ultimate nondisability determination . . . .”) (internal citations and quotations omitted).

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1       **V.    DISCUSSION**

2           Plaintiff alleges the ALJ erred by failing to include Claimant’s mild mental  
3 limitations in the RFC and the hypothetical questions posed to the vocational expert during  
4 the past relevant work (“PRW”) assessment. Dkt. No. 16-1 at 4–5, 10.

5           The Court agrees the ALJ erred by neither including mental limitations in the RFC  
6 nor explaining the failure to do so. Because the mental limitations may have affected the  
7 PRW determination, the error is not harmless.

8           **A. Mild Mental Limitations and the RFC**

9           An RFC “is an assessment of an individual’s ability to do sustained work-related  
10 physical and mental activities in a work setting on a regular and continuing basis.” SSR  
11 96–8p, 1996 WL 374184, at \*1 (July 2, 1996). It is the most a claimant can do given his  
12 limitations. 20 C.F.R. § 404.1545. The ALJ must consider all medical impairments when  
13 formulating the RFC, including those that are not severe. *Id.* § 404.1545(a)(2).

14           Formulating the RFC requires a “more detailed assessment” of a claimant’s mental  
15 impairments than what is required for the step 2 paragraph B analysis. SSR 96-8p, 1996  
16 WL 374184 at \*4 (“The mental RFC assessment used at steps four and five of the sequential  
17 evaluation process requires a more detailed assessment by itemizing various functions  
18 contained in the broad categories found in [paragraph B] of the adult mental disorders  
19 listings . . . .”); *David Allan G. v. Comm’r of Soc. Sec.*, No. 1:21-cv-00162-DKG, 2023 WL  
20 2479921, at \*4 (D. Idaho Mar. 10, 2023) (finding an ALJ erred by not including a  
21 discussion “reflecting that she considered all of Plaintiff’s medically determinable  
22 impairments, specifically the mental impairments, in fashioning the RFC and making the  
23 disability determination”). “This is because in some instances, when a nonsevere  
24 impairment is considered ‘in combination with limitations imposed by an individual’s  
25 other impairments, the limitations due to such a [nonsevere] impairment may prevent an  
26 individual from performing past relevant work or may narrow the range of other work that  
27 the individual may still be able to do.’” *Id.* at \*5 (quoting SSR 96-8p).

1 Here, in step two of the paragraph B analysis, the ALJ found Claimant had mild  
2 limitations in two of the four mental health functional areas. But the ALJ included only  
3 exertional limitations in the RFC. The ALJ’s decision does not explain why the RFC does  
4 not contain mental limitations. The ALJ then posed an RFC-based hypothetical to the  
5 vocational expert and concluded that Claimant could perform his PRW as a Customer  
6 Complaint Clerk, Sales Clerk, and Tax Preparer and, therefore, was not disabled.  
7 AR 23–24, 36–43.

8 The ALJ erred by failing to either include mental health limitations in the RFC or  
9 explain why Claimant’s mental health impairments were not limiting. *See Hutton v. Astrue*,  
10 491 F. App’x 850 (9th Cir. 2012) (“Regardless of [a mental limitation’s] severity . . . the  
11 ALJ was still required to consider [the plaintiff’s mental limitation] when he determined  
12 [the plaintiff’s] RFC.”); *see also Craig H. v. Kijakazi*, 22-cv-0800-AJB-LR, 2023 WL  
13 4679342, at \*12 (S.D. Cal. July 21, 2023) (remanding because “the ALJ’s written opinion  
14 does not articulate why, after finding that Plaintiff had mild mental limitations in three of  
15 four broad paragraph B criteria, he did not include any of those restrictions in the RFC”),  
16 *report and recommendation adopted*, 2023 WL 5340794 (S.D. Cal. Aug. 18, 2023);  
17 *Kitty S. v. Kijakazi*, No. EDCV 21-00390-JEM, 2022 WL 2117160, at \*5–7 (C.D. Cal.  
18 June 13, 2022) (finding reversible error because the ALJ made “mild step two paragraph  
19 B findings” but did not discuss claimant’s non-severe mental impairments at later steps,  
20 “in particular in formulating [the] RFC”).

21 The ALJ’s boilerplate language that he “considered all of the claimant’s medically  
22 determinable impairments, including those that are not severe, when assessing the  
23 claimant’s residual functional capacity” (AR 19) does not satisfy the “more detailed  
24 assessment” required by the regulations. *David Allan G.*, 2023 WL 2479921, at \*2  
25 (“Ultimately, aside from a brief, boilerplate indication that ‘any impairment, symptom, or  
26 condition not addressed above has not affected the claimant’s residual functional capacity,’  
27 the ALJ’s opinion does not include any discussion or analysis of how Plaintiff’s non-severe  
28 mental impairments were factored into the RFC determination, and the RFC itself does not

1 contain any nonexertional limitations.”); *Delia v. Saul*, No. 1:18-CV-00314-CWD, 2019  
2 WL 4601834, at \*7–9 (D. Idaho Sept. 23, 2019) (“The boilerplate language used in the  
3 ALJ’s decision, without any discussion of Petitioner’s mental impairments in the RFC  
4 determination, does not satisfy the regulation’s requirements.”); *Barrera v. Berryhill*, No.  
5 CV 17-07096-JEM, 2018 WL 4216693, at \*5 (C.D. Cal. Sept. 5, 2018) (reversing an ALJ’s  
6 decision that “did not say she had considered mild limitations or nonsevere impairments,  
7 offering only boilerplate language that she considered ‘all symptoms’”) (citation omitted).

### 8 **B. Harmless Error**

9 The ALJ’s error is not harmless. Although the ALJ found Claimant’s mental health  
10 impairments do not present “more than a minimal limitation in the claimant’s ability to do  
11 basic work activities” (AR 19), the ALJ’s PRW assessment analyzed jobs that arguably  
12 involve more complicated tasks than basic work activity.<sup>4</sup> For example, the “skilled work,”  
13 Customer Complaint Clerk position requires “dealing with people, facts, or figures or  
14 abstract ideas at a high level of complexity.” 20 C.F.R. § 404.1568(c); DICOT  
15 241.367-014 (G.P.O.), 1991 WL 672252) (Jan. 1, 2016) (Dictionary of Occupational  
16 Titles). Other significant functions of that position include “compiling” and “speaking-  
17 signaling,” which frequently demand “carrying out a prescribed action in relation to the  
18 information” and “giving assignments and/or directions to helpers or assistants.” DICOT,  
19 Appendix B, [http://occupationalinfo.org/affendixb\\_1.html](http://occupationalinfo.org/affendixb_1.html) (Apr. 11, 2020).

20 The Sales Clerk and Tax Preparer positions require a significant relationship with  
21 data and people and involve, among other things, compiling data and carrying out a  
22 prescribed action, dealing with people by exchanging information with others, giving  
23 assignments or directions to helpers, and attaining precise limits. *Id.*; DICOT 290.477-014

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26 <sup>4</sup> The regulations define basic work activities as “the abilities and aptitudes necessary to do  
27 most jobs.” 20 C.F.R. § 404.1522. Basic abilities and aptitudes include understanding,  
28 carrying out, and remembering simple instructions; use of judgment; responding  
appropriately to supervision, co-workers and usual work situations; and dealing with  
changes in a routine work setting. *Id.*

1 (G.P.O.), 1991 WL 672554 (Jan. 1, 2016) (Sales Clerk); DICOT 219.362-070 (G.P.O.),  
2 1991 WL 671965 (Jan. 1, 2016) (Tax Preparer).

3       The record calls into question whether Claimant could have performed the  
4 requirement of these PRW positions given his mental limitations, including evidence that  
5 Claimant: (1) was on medication that caused him to be tired, and he had little recall or  
6 motivation (AR 191–93); (2) endorsed a “‘flat mood’, low motivation, anhedonia, waking  
7 frequently throughout the night [with] difficulty going back to sleep, low energy level, poor  
8 appetite (he lost nearly 20 lbs in 3 months), nervousness/anxiety [especially] early in the  
9 morning, difficulty concentrating, low self-worth, difficulty controlling worry, difficulty  
10 relaxing and some passive thoughts of being ‘better off dead’” (AR 255–57); and  
11 (3) exhibited problems with concentration, comprehension, memory, test scores, typing,  
12 misspelling, fatigue, anxiety, worry, sleeplessness, nervousness, his ability to recall facts,  
13 forgetfulness, suicidal ideation, and depression (AR 32–46).

14       A properly formulated RFC might contain mental health limitations inconsistent  
15 with the PRWs the ALJ found Plaintiff could perform. The ALJ’s error, therefore, is not  
16 harmless. *See David Allan G.*, 2023 WL 2479921, at \*6 (concluding there was no harmless  
17 error because it remained unclear from the ALJ’s decision whether Plaintiff could perform  
18 PRW notwithstanding mild mental limitations); *Carlson v. Berryhill*,  
19 No. 18-CV-03107-LB, 2019 WL 1116241, at \*18 (N.D. Cal. Mar. 10, 2019) (“the court  
20 cannot determine what would have happened had the ALJ considered the plaintiff’s mild  
21 mental impairments when assessing the RFC or how the vocational experts would have  
22 testified had that limitation been included in the hypotheticals posed.”) (citation omitted);  
23 *Ynzunza v. Astrue*, No. CV 07-7166-PLA, 2010 WL 3270975, at \*8 (C.D. Cal. Aug. 17,  
24 2010) (“in concluding that plaintiff can do his past work as defined in the DOT, the ALJ  
25 failed to consider the combined effects of all of plaintiff’s impairments—including his  
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27  
28



1 nonsevere depression and his limitations with concentration and attention”) (citing SSR  
2 85–28, 1985 WL 56856 (Jan. 1, 1985)).<sup>5</sup>

3 **C. Remand**

4 “The decision whether to remand a case for additional evidence, or simply to award  
5 benefits is within the discretion of the court.” *Trevizo v. Berryhill*, 871 F.3d 664, 682 (9th  
6 Cir. 2017) (citation omitted). Because a properly formulated RFC might still support a  
7 conclusion that Claimant was not disabled, a remand for further proceedings is appropriate  
8 here. *See Bunnell v. Barnhart*, 336 F.3d 1112, 1116 (9th Cir. 2003) (remanding for further  
9 administrative proceedings where several “outstanding issues” remained to be resolved, it  
10 was “not clear from the record that an [ALJ] would be required to find the claimant disabled  
11 and award disability benefits”).

12 **VI. CONCLUSION**

13 Based on the foregoing, the Court **GRANTS** Plaintiff’s Motion for Summary  
14 Judgment (Dkt. No. 16) and **DENIES** Defendant’s Cross Motion for Summary Judgment  
15 (Dkt. No. 17). The Court **REMANDS** to the Commissioner for further consideration and  
16 development of the record in accordance with this opinion.

17 **IT IS SO ORDERED.**

18 Dated: September 29, 2023

19 

20 \_\_\_\_\_  
Honorable Daniel E. Butcher  
21 United States Magistrate Judge

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23 \_\_\_\_\_  
24 <sup>5</sup> Although the Commissioner cites this Court’s decision in *Janet A. v. Kijakazi*, 21-cv-  
25 0227-DEB, 2022 WL 4004199 (S.D. Cal. Sept. 1, 2022) for the proposition that the ALJ  
26 was not required to include Claimant’s mild mental limitations in the RFC, this Court stated  
27 in *Janet A.* that “[a]n ALJ must consider the limiting effect of all impairments, including  
28 non-severe ones,” but found the failure to do so there was harmless because (unlike the  
case here) “nothing in the record establishes Plaintiff’s mental impairments have any effect  
on her ability to work.” *Id.* at \*4.