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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

VIRGINIA STACKHOUSE,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,  
Defendant.

) Case No. CV 09-6096 JCG

) **MEMORANDUM OPINION AND  
ORDER**

**I.**

**INTRODUCTION AND SUMMARY**

On August 20, 2009, plaintiff Virginia Stackhouse (“Plaintiff”) filed a complaint against defendant Michael J. Astrue, the Commissioner of the Social Security Administration (“Defendant” or “Commissioner”), seeking review of the denial of disability insurance benefits. [Docket No. 1.]

On March 12, 2010, Defendant filed his answer, along with a certified copy of the administrative record. [Docket Nos. 8, 9.]

On April 14, 2010, this matter was transferred to the calendar of the undersigned Magistrate Judge. [Docket No. 10.] Both Plaintiff and Defendant

1 subsequently consented to proceed for all purposes before the Magistrate Judge  
2 pursuant to 28 U.S.C. § 636(c). [Docket Nos. 11, 15.]

3 On May 24, 2010, the parties submitted a detailed, 53-page joint stipulation  
4 for the resolution of issues presented in this case. [Docket No. 17.] The Court  
5 deems the matter suitable for adjudication without oral argument.

6 In sum, having studied, *inter alia*, the parties' joint stipulation and the  
7 administrative record, the Court concludes that the Administrative Law Judge  
8 ("ALJ") conspicuously erred in failing to provide a meaningful explanation in  
9 discounting the statements of a lay witness. The ALJ's parsimonious conclusion  
10 that "greater weight" was simply afforded to the "documented medical evidence"  
11 cannot be reconciled with Ninth Circuit precedent demanding that the ALJ supply  
12 "germane reasons." Accordingly, the Court remands this matter to the  
13 Commissioner in accordance with the principles and instructions enunciated in this  
14 Memorandum Opinion and Order.

## 15 II.

### 16 **FACTUAL AND PROCEDURAL BACKGROUND**

17 Plaintiff, who was 50 years of age on the date of her administrative hearing,  
18 has an eighth grade education. (Administrative Record ("AR") at 37, 56, 123.) Her  
19 past relevant work includes employment as a rehabilitation supervisor, assembly  
20 worker, babysitter, housekeeper, and merchandise deliverer. (*Id.* at 26.)

21 On March 16, 2006, over four years ago, Plaintiff filed for disability insurance  
22 benefits ("DIB"), alleging that she has been disabled since January 22, 2005 due to  
23 depression and anxiety. (*See* AR at 123-25, 143.) Plaintiff's application was denied  
24 initially and on reconsideration. (*Id.* at 67-71, 75-79.)

25 On February 25, 2009, Plaintiff, represented by counsel, appeared and  
26 testified at a hearing before an ALJ. (AR at 37, 39-57.) The ALJ also heard  
27 testimony from Sharon Spabenta, a vocational expert ("VE"). (*Id.* at 57-63.)

28 On March 11, 2009, the ALJ denied Plaintiff's request for benefits. (AR at

1 21-28.) Applying the five-step sequential evaluation process – which is discussed  
2 below – the ALJ found, at step one, that Plaintiff has not engaged in substantial  
3 gainful activity since her alleged onset date of disability. (*Id.* at 23.) At step two,  
4 the ALJ found that Plaintiff suffers from severe impairments consisting of major  
5 depressive disorder, not otherwise specified, and anxiety. (*Id.*)

6 At step three, the ALJ determined that the evidence does not demonstrate that  
7 Plaintiff’s impairment, either individually or in combination, meet or medically  
8 equal the severity of any listing set forth in the Social Security regulations.<sup>1/</sup> (AR at  
9 23.)

10 The ALJ then assessed Plaintiff’s residual functional capacity<sup>2/</sup> (“RFC”) and  
11 determined that she can perform “a full range of work at all exertional levels but  
12 with the following nonexertional limitations: limited to simple repetitive tasks not  
13 requiring more than occasional interaction with the general public; and, no stress/fast  
14 paced production standard.” (AR at 24 (emphasis omitted).)

15 Based on Plaintiff’s RFC, the ALJ found, at step four, that Plaintiff lacks the  
16 ability to perform her past relevant work. (AR at 26.)

17 At step five, based on Plaintiff’s vocational factors and the VE’s testimony,  
18 the ALJ found that “there are jobs that exist in significant numbers in the national  
19 economy that [Plaintiff] can perform,” including “grader/sorter” and “laundry  
20 worker.” (AR at 27 (emphasis omitted).) Thus, the ALJ concluded that Plaintiff  
21 was not suffering from a disability as defined by the Act. (*Id.* at 21, 27.)

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23 <sup>1/</sup> See 20 C.F.R. pt. 404, subpt. P, app. 1.

24 <sup>2/</sup> Residual functional capacity is what a claimant can still do despite existing  
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155  
26 n. 5 (9th Cir. 1989). “Between steps three and four of the five-step evaluation, the  
27 ALJ must proceed to an intermediate step in which the ALJ assesses the claimant’s  
28 residual functional capacity.” *Massachi v. Astrue*, 486 F.3d 1149, 1151 n. 2 (9th  
Cir. 2007).

1 Plaintiff filed a timely request for review of the ALJ's decision, which was  
2 denied by the Appeals Council. (AR at 1-3, 7.) The ALJ's decision stands as the  
3 final decision of the Commissioner.

### 4 III.

#### 5 APPLICABLE LEGAL STANDARDS

##### 6 A. Five-Step Inquiry to Ascertain a Cognizable Disability

7 A claimant must satisfy three fundamental elements to be eligible for  
8 disability benefits: (1) a medically-determinable impairment; (2) the impairment  
9 prevents the claimant from engaging in substantial gainful activity; and (3) the  
10 impairment is expected to result in death or to last for a continuous period of at least  
11 12 months. 42 U.S.C. § 423(d)(1)(A); *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th  
12 Cir. 1999). A well-established five-step sequential inquiry is utilized to assess  
13 whether a particular claimant satisfies these three elements. The inquiry proceeds as  
14 follows:

15 First, is the claimant engaging in substantial gainful activity? If so, the  
16 claimant cannot be considered disabled.

17 Second, does the claimant suffer from a "severe" impairment, *to wit*, one  
18 continuously lasting at least 12 months? If not, the claimant is not disabled.

19 Third, does the claimant's impairment or combination of impairments meet or  
20 equal an impairment specifically identified as a disability by the Commissioner  
21 under 20 C.F.R. part 404, subpart P, appendix 1? If so, the claimant is automatically  
22 determined to be disabled.

23 Fourth, is the claimant capable of performing his past work? If so, the  
24 claimant is not disabled.

25 Fifth, does the claimant have the so-called "residual functional capacity" to  
26 perform some other type of work? The critical question posed here is whether the  
27 claimant can, in light of the impairment and his or her age, education and work  
28 experience, adjust to another form of gainful employment?

1           If a claimant is found “disabled” or “not disabled” along any of these steps,  
2 there is no need to complete the remaining inquiry. 20 C.F.R. §§ 404.1520(a)(4) &  
3 416.920(a)(4); *Tackett*, 180 F.3d at 1098-99.

4           B.     Standard of Review on Appeal

5           This Court is empowered to review decisions by the Commissioner to deny  
6 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
7 Administration must be upheld if they are free of legal error and supported by  
8 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001, *as*  
9 *amended* Dec. 21, 2001). If the court, however, determines that the ALJ’s findings  
10 are based on legal error or are not supported by substantial evidence in the record,  
11 the court may reject the findings and set aside the decision to deny benefits.  
12 *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*,  
13 242 F.3d 1144, 1147 (9th Cir. 2001).

14           “Substantial evidence is more than a mere scintilla, but less than a  
15 preponderance.” *Aukland*, 257 F.3d at 1035. Substantial evidence is such “relevant  
16 evidence which a reasonable person might accept as adequate to support a  
17 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276 F.3d  
18 at 459. To determine whether substantial evidence supports the ALJ’s finding, the  
19 reviewing court must review the administrative record as a whole, “weighing both  
20 the evidence that supports and the evidence that detracts from the ALJ’s  
21 conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be affirmed  
22 simply by isolating a specific quantum of supporting evidence.” *Aukland*, 257 F.3d  
23 at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th Cir. 1998)). If the  
24 evidence can reasonably support either affirming or reversing the ALJ’s decision,  
25 the reviewing court “may not substitute its judgment for that of the ALJ.” *Id.*  
26 (quoting *Matney ex rel. Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)).

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1 IV.

2 **ISSUES PRESENTED**

3 Five disputed issues are presented for decision here:

- 4 1. whether the ALJ’s finding on Plaintiff’s RFC is supported by  
5 substantial evidence and whether the hypothetical question presented to the VE was  
6 incomplete, (*see* Joint Stip. at 4-15, 20-22);  
7 2. whether the ALJ erred in her step three analysis, (*id.* at 22-24, 26-27);  
8 3. whether the ALJ failed to fully and properly develop the record, (*id.* at  
9 27-29, 32-34);  
10 4. whether the ALJ improperly rejected the opinions of Plaintiff’s treating  
11 physicians, (*id.* at 34-37, 40-41); and  
12 5. whether the ALJ improperly discredited Plaintiff’s credibility and  
13 improperly discounted the lay witness’s statements. (*Id.* at 42-46, 50-52.)

14 Under the circumstances here, the Court finds the issue of the ALJ’s  
15 assessment of Plaintiff’s lay witness’s statements to be dispositive of this matter, and  
16 declines to substantively address the remaining issues.

17 V.

18 **DISCUSSION AND ANALYSIS**

19 Plaintiff contends that the ALJ failed to properly assess the lay witness  
20 statements of Plaintiff’s friend Michelle Clisby (“Ms. Clisby”). (Joint Stip. at 45-  
21 46.) Plaintiff argues that the ALJ failed “to provide a sufficient credibility analysis  
22 of Ms. Clisby’s written statement” and “did not have proper germane bases for  
23 rejecting this evidence[.]” (*Id.* at 46.) Plaintiff also maintains that the ALJ  
24 inappropriately rejected Ms. Clisby’s statements on the basis that “her testimony is  
25 not supported by the medical evidence in the record.” (*Id.* at 52.)

26 On the other hand, Defendant argues that the ALJ “did not give great weight  
27 to Ms. Clisby’s statements because they were inconsistent with the medical  
28 evidence[.]” (Joint Stip. at 50.)

1           A.     ALJ Must Provide Reasons Germane to Lay Witness to Discount Such  
2                     Testimony

3           “[L]ay testimony as to a claimant’s symptoms or how an impairment affects  
4 ability to work *is* competent evidence and therefore *cannot* be disregarded without  
5 comment.” *Stout v. Commissioner*, 454 F.3d 1050, 1053 (9th Cir. 2006) (internal  
6 quotation marks, ellipses and citation omitted) (italics in original); *see Smolen v.*  
7 *Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996); *see also* 20 C.F.R. §§ 404.1513(d)(4)  
8 (explaining that Commissioner will consider evidence from “non-medical  
9 sources[,]” including “spouses, parents and other caregivers, siblings, other relatives,  
10 friends, neighbors, and clergy[,]” in determining how a claimant’s impairments  
11 affect his or her ability to work) & 416.913(d)(4) (same).

12           The ALJ may only discount the testimony of lay witnesses if he provides  
13 specific “reasons that are germane to each witness.” *Dodrill v. Shalala*, 12 F.3d 915,  
14 919 (9th Cir. 1993); *accord Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001) (“Lay  
15 testimony as to a claimant’s symptoms is competent evidence that an ALJ must take  
16 into account, unless he or she expressly determines to disregard such testimony and  
17 gives reasons germane to each witness for doing so.”).

18           Finally, “where the ALJ’s error lies in a failure to properly discuss competent  
19 lay testimony favorable to the claimant, a reviewing court cannot consider the error  
20 harmless unless it can confidently conclude that no reasonable ALJ, when fully  
21 crediting the testimony, could have reached a different disability determination.”  
22 *Stout*, 454 F.3d at 1056.

23           B.     Third Party Report

24           Here, on May 25, 2006, Ms. Clisby completed a Third Party Function Report  
25 on behalf of Plaintiff. (AR at 152-59.) Ms. Clisby reported that Plaintiff cannot “get  
26 to sleep until 4 or 5 a.m.” (*Id.* at 152.) She also stated that Plaintiff cries or “is  
27 tearful with a flat affect 70% of her waking hours” and “takes 3 times the amou[n]t  
28 of time to do her normal chores.” (*Id.*)

1 Ms. Clisby further explained that, in the past, Plaintiff “could multi task” and  
2 “was always well groomed.” (AR at 153.) However, she reported that currently  
3 Plaintiff “has to be reminded to change clothing” and is “not as well groomed.” (*Id.*)  
4

5 Ms. Clisby described that Plaintiff is able to perform and complete tasks “if  
6 someone stays with her, distract[s] her and keeps encouraging her.” (*See* AR at  
7 154.) However, Ms. Clisby explained that “[a]t times the chore is too much for her  
8 to hand[le.]” (*Id.* at 155.) Ms. Clisby also stated that completing some tasks takes  
9 “at least 2 to 3 times longer than usual.” (*Id.* at 154.)

10 Ms. Clisby indicated that Plaintiff “needs prompting” when following written  
11 instructions and follows spoken instructions “not well at all.” (AR at 157.)  
12 Moreover, Ms. Clisby reported that Plaintiff is “fearful” of changes in routine. (*Id.*  
13 at 158.)

14 C. The ALJ’s Analysis of the Third Party Report

15 With respect to Ms. Clisby’s Third Party Report and the statements therein,  
16 the ALJ furnished a six-sentence summary and, then, a *one-sentence* conclusion, as  
17 as follows:

18 In May 2006, Michelle Clisby, [Plaintiff’s] friend, reported that  
19 [Plaintiff] is crying or is tearful with a flat affect about 70% of  
20 her waking hours. She used to keep her home spotless and cook  
21 the family meals, but is no longer able to do so. She goes outside  
22 short periods of time each day. [Plaintiff] is able to drive and  
23 ride in a car. She used to have many hobbies, but she no longer  
24 shows interest. [Plaintiff] is limited in ability to remember,  
25 complete tasks, concentrate, understand, follow instructions, and  
26 get along with others. The undersigned gives greater weight to  
27 the documented medical evidence of record.

28 (AR at 24-25 (citation omitted).)



1           D.     The ALJ Failed to Provide Reasons Germane to Lay Witness for  
2                     Discounting Her Statements

3           While the ALJ summarized Ms. Clisby’s lay witness statements, she failed to  
4 give specific, germane reasons for discounting Ms. Clisby’s Third Party Report.  
5 This is insufficient. Two reasons govern this dispositive determination.

6           First, the ALJ’s discounting of Ms. Clisby’s statements based on the ALJ’s  
7 assignment of “greater weight to the documented evidence of record[]” fails to  
8 provide the Court any insight as to the ALJ’s reasons for rejecting her lay witness  
9 statements. The Court declines to guess as to the ALJ’s reasoning. *See also Robbins*  
10 *v. Soc. Sec. Admin.*, 466 F.3d 880, 884 n. 2 (9th Cir. 2000) (“[W]ith no reference to  
11 the record in this part of the decision, we are left to guess what testimony the ALJ  
12 was considering and why he thought it undermined [plaintiff]’s credibility.”).

13           Second, apart from giving “greater weight to the documented medical  
14 evidence of record[,]” the ALJ gave no other valid reason for discounting Ms.  
15 Clisby’s credibility. *See, e.g., Acevedo ex rel. A.A. v. Astrue*, 2010 WL 1994661, at  
16 \*5 (C.D. Cal. 2010) (remand appropriate where ALJ fails to provide a legitimate  
17 reason germane to lay witness for discounting her credibility).

18           Given Ms. Clisby’s statements regarding Plaintiff’s ability to complete tasks,  
19 among other impairments, the Court cannot *confidently* conclude that no reasonable  
20 ALJ could have reached a different disability determination if the lay witness  
21 statements had been *fully* credited. *Stout*, 454 F.3d at 1056.

22           Now, Defendant contends that the “ALJ did not give great weight to Ms.  
23 Clisby’s statements because they were *inconsistent* with the medical evidence,  
24 including [the examining opinion of psychologist Paul R. Martin, Ph.D. (“Dr.  
25 Martin”)].” (*See Joint Stip.* at 50 (emphasis added); *see also AR* at 310-14.) While  
26 this may have been a germane reason (assuming there was substantial evidence to  
27 support the reason) for the ALJ to disregard Ms. Clisby’s statements, the ALJ did  
28 not rely on this reason and Defendant’s explanation, generated in hindsight, cannot

1 cure this infirmity. (*See generally* AR at 21-28.)

2 The ALJ simply and only said she afforded “greater weight to the documented  
3 medical evidence of record.” (AR at 25.) The Court does not find the ALJ’s  
4 assignment of greater weight to the medical evidence as necessarily equivalent to  
5 rejecting Ms. Clisby’s statements because of “inconsistency” with the medical  
6 evidence.

7 This conclusion is underscored by the fact that, contrary to Defendant’s  
8 blanket assertion, portions of Ms. Clisby’s statements, in fact, comport with Dr.  
9 Martin’s opinion. (*Compare* AR at 152-59 *with id.* at 310-14.) For example, Dr.  
10 Martin found Plaintiff to be a “reliable historian” and indicated her reports that “she  
11 cries all the time” and “has loss of function in basic activities of daily living.” (*Id.* at  
12 310-11.) Dr. Martin also noted that Plaintiff “is experiencing disruption in both  
13 social and occupation functioning due to her psychiatric symptoms.” (*Id.* at 313.)

14 In any event, the Court’s review is limited to the reasons actually provided by  
15 the ALJ in her decision and, in the end, the ALJ did not provide germane reasons.  
16 *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (“We review only the reasons  
17 provided by the ALJ in the disability determination and may not affirm the ALJ on a  
18 ground upon which he did not rely.”); *Connett v. Barnhart*, 340 F.3d 871, 874 (9th  
19 Cir. 2003) (“We are constrained to review the reasons the ALJ asserts[ and i]t was  
20 error for the district court to affirm the ALJ’s . . . decision based on evidence that the  
21 ALJ did not discuss.”) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)).

## 22 VI.

### 23 REMAND IS APPROPRIATE

24 This Court has discretion to remand or reverse and award benefits. *McAllister*  
25 *v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989, *as amended* Oct. 19, 1989). Where no  
26 useful purpose would be served by further proceedings, or where the record has been  
27 fully developed, it is appropriate to exercise this discretion to direct an immediate  
28 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004);

1 *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000, *as amended* May 4, 2000),  
2 *cert. denied*, 531 U.S. 1038 (2000). Where there are outstanding issues that must be  
3 resolved before a determination can be made, and it is not clear from the record that  
4 the ALJ would be required to find plaintiff disabled if all the evidence were properly  
5 evaluated, remand is appropriate. *See Benecke*, 379 F.3d at 595-96; *Harman*, 211  
6 F.3d at 1179-80.

7 Here, remand is required because the ALJ erred in failing to properly address  
8 the lay witness statements offered by Plaintiff's friend.<sup>3/</sup> On remand, the ALJ shall  
9 consider Ms. Clisby's Third Party Report and, if she decides to reject any or all of  
10 her statements, she must provide reason(s) that are germane to Ms. Clisby. In  
11 addition, the ALJ shall reassess the medical opinions in the record, such as the  
12 opinions of Plaintiff's treating psychiatrists, and provide sufficient reasons under the  
13 applicable legal standard for rejecting any portion of the medical opinions. The ALJ  
14 shall then proceed through steps four and five to determine what work, if any,  
15 Plaintiff is capable of performing.

16 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered  
17 **REVERSING** the decision of the Commissioner denying benefits and  
18 **REMANDING** the matter for further administrative action consistent with this  
19 decision.

20  
21 Dated: October 5, 2010

  
22  
23 Hon. Jay C. Gandhi  
United States Magistrate Judge  
24  
25

26  
27 <sup>3/</sup> In light of the Court's remand instructions, it is unnecessary for the Court to  
28 address Plaintiff's remaining contentions. (*See* Joint Stip. at 4-15, 20-22, 22-24, 26-  
27, 27-29, 32-34, 34-37, 40-41, 43-45, 50-51.)