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

JUANA M. NAVARRO,

Plaintiff,

v.

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant.

No. CV 10-217-PLA

MEMORANDUM OPINION AND ORDER

I.

PROCEEDINGS

Plaintiff filed this action on January 14, 2010, seeking review of the Commissioner’s denial of her application for Supplemental Security Income payments. The parties filed Consents to proceed before the undersigned Magistrate Judge on February 1, 2010, and February 19, 2010. The parties filed a Joint Stipulation on September 17, 2010, that addresses their positions concerning the disputed issues in the case. The Court has taken the Joint Stipulation under submission without oral argument.

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II.

BACKGROUND

Plaintiff was born on August 4, 1960. [Administrative Record (“AR”) at 95, 103.] She has a high school diploma, has received computer training, and has past relevant work experience as a customer service representative, secretary, and store manager. [AR at 34-36, 108-12, 119-21, 127.]

Plaintiff protectively filed her application for Supplemental Security Income payments on June 8, 2007, alleging that she has been unable to work since December 2, 1999, due to, among other things, depression, anxiety, and back problems. [AR at 7, 63, 95-98, 103-07, 118-28.] After plaintiff’s application was denied initially and on reconsideration, she requested a hearing before an Administrative Law Judge (“ALJ”). [AR at 65-69, 71-76, 80.] A hearing was held on May 7, 2009, at which plaintiff appeared with counsel and testified on her own behalf. A vocational expert also testified. [AR at 31-60.] On June 2, 2009, the ALJ found plaintiff not disabled. [AR at 4-19.] When the Appeals Council denied plaintiff’s request for review of the hearing decision on November 19, 2009, the ALJ’s decision became the final decision of the Commissioner. [AR at 1-3.] This action followed.

III.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence or if it is based upon the application of improper legal standards. Moncada v. Chater, 60 F.3d 521, 523 (9th Cir. 1995); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992).

In this context, the term “substantial evidence” means “more than a mere scintilla but less than a preponderance -- it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” Moncada, 60 F.3d at 523; see also Drouin, 966 F.2d at 1257. When determining whether substantial evidence exists to support the Commissioner’s decision, the Court examines the administrative record as a whole, considering adverse as well

1 as supporting evidence. Drouin, 966 F.2d at 1257; Hammock v. Bowen, 879 F.2d 498, 501 (9th
2 Cir. 1989). Where the evidence is susceptible to more than one rational interpretation, the Court
3 must defer to the decision of the Commissioner. Moncada, 60 F.3d at 523; Andrews v. Shalala,
4 53 F.3d 1035, 1039-40 (9th Cir. 1995); Drouin, 966 F.2d at 1258.

6 IV.

7 THE EVALUATION OF DISABILITY

8 Persons are “disabled” for purposes of receiving Social Security benefits if they are unable
9 to engage in any substantial gainful activity owing to a physical or mental impairment that is
10 expected to result in death or which has lasted or is expected to last for a continuous period of at
11 least twelve months. 42 U.S.C. § 423(d)(1)(A); Drouin, 966 F.2d at 1257.

13 A. THE FIVE-STEP EVALUATION PROCESS

14 The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing
15 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lester v. Chater, 81 F.3d 821,
16 828 n.5 (9th Cir. 1995, as amended April 9, 1996). In the first step, the Commissioner must
17 determine whether the claimant is currently engaged in substantial gainful activity; if so, the
18 claimant is not disabled and the claim is denied. Id. If the claimant is not currently engaged in
19 substantial gainful activity, the second step requires the Commissioner to determine whether the
20 claimant has a “severe” impairment or combination of impairments significantly limiting her ability
21 to do basic work activities; if not, a finding of nondisability is made and the claim is denied. Id.
22 If the claimant has a “severe” impairment or combination of impairments, the third step requires
23 the Commissioner to determine whether the impairment or combination of impairments meets or
24 equals an impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R., Part 404,
25 Subpart P, Appendix 1; if so, disability is conclusively presumed and benefits are awarded. Id.
26 If the claimant’s impairment or combination of impairments does not meet or equal an impairment
27 in the Listing, the fourth step requires the Commissioner to determine whether the claimant has
28 sufficient “residual functional capacity” to perform her past work; if so, the claimant is not disabled

1 and the claim is denied. Id. The claimant has the burden of proving that she is unable to
2 perform past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets this burden, a
3 prima facie case of disability is established. The Commissioner then bears the burden of
4 establishing that the claimant is not disabled, because she can perform other substantial gainful
5 work available in the national economy. The determination of this issue comprises the fifth and
6 final step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester, 81 F.3d at 828
7 n.5; Drouin, 966 F.2d at 1257.

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9 **B. THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS**

10 In this case, at step one, the ALJ concluded that plaintiff has not engaged in any substantial
11 gainful activity since the date plaintiff filed her application for Supplemental Security Income
12 payments. [AR at 9.] At step two, the ALJ concluded that plaintiff has the “severe” impairments
13 of degenerative changes of the lumbosacral spine, anemia, obesity, and dysthymia. [Id.] At step
14 three, the ALJ concluded that plaintiff’s impairments do not meet or equal any of the impairments
15 in the Listing. [AR at 11.] The ALJ further found that plaintiff retained the residual functional
16 capacity¹ “to perform a range of medium work.”² [AR at 12.] Specifically, the ALJ stated that
17 plaintiff “can lift fifty pounds occasionally, twenty-five pounds frequently, stand and/or walk six
18 hours and sit six hours in an eight-hour workday. [Plaintiff] can occasionally stoop, kneel, crouch
19 and crawl. [Plaintiff] is limited to the performance of simple work.” [AR at 12-13.] At step four,
20 the ALJ concluded that plaintiff is unable to perform her past relevant work. [AR at 17.] At step
21 five, relying on the Medical-Vocational Rules as a framework and the vocational expert’s
22 testimony, the ALJ concluded that there are jobs that exist in significant numbers in the national

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25 ¹ Residual functional capacity (“RFC”) is what a claimant can still do despite existing
26 exertional and nonexertional limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155 n. 5 (9th Cir.
1989).

27 ² Medium work is defined as work involving “lifting no more than 50 pounds at a time with
28 frequent lifting or carrying of objects weighing up to 25 pounds.” 20 C.F.R. §§ 404.1567(c),
416.967(c).

1 economy that plaintiff can perform. [AR at 17-18.] Accordingly, the ALJ found plaintiff not
2 disabled. [AR at 18.]

3 **V.**

4 **THE ALJ'S DECISION**

5 Plaintiff contends that the ALJ failed to properly consider: (1) the evidence concerning
6 plaintiff's mental impairment; (2) the evidence concerning plaintiff's physical impairments; and
7 (3) plaintiff's testimony. [Joint Stipulation ("JS") at 4.] As set forth below, the Court agrees with
8 plaintiff, in part, and remands the matter for further proceedings.

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10 **A. PLAINTIFF'S MENTAL IMPAIRMENT**

11 Plaintiff contends that the ALJ erred in considering the evidence pertaining to her mental
12 impairment. [JS at 4-9.] Specifically, plaintiff asserts that the ALJ, in reaching the RFC
13 determination, failed to account for the opinion of nonexamining physician Dr. P. Y. Klein that
14 plaintiff can only perform work involving simple one- to two-step tasks. [JS at 4-7.] Plaintiff further
15 contends that the jobs identified by the vocational expert, upon which the ALJ relied in finding
16 plaintiff not disabled, are inconsistent with Dr. Klein's opinion. [JS at 7-9.]

17 In evaluating medical opinions, the case law and regulations distinguish among the opinions
18 of three types of physicians: (1) those who treat the claimant (treating physicians); (2) those who
19 examine but do not treat the claimant (examining physicians); and (3) those who neither examine
20 nor treat the claimant (nonexamining physicians). See 20 C.F.R. §§ 404.1502, 404.1527,
21 416.902, 416.927; see also Lester, 81 F.3d at 830. Generally, the opinions of treating physicians
22 are given greater weight than those of other physicians, because treating physicians are employed
23 to cure and therefore have a greater opportunity to know and observe the claimant. Orn v. Astrue,
24 495 F.3d 625, 631 (9th Cir. 2007); Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996). Despite
25 the presumption of special weight afforded to treating physicians' opinions, an ALJ is not bound
26 to accept the opinion of a treating physician. However, the ALJ may only give less weight to a
27 treating physician's opinion that conflicts with the medical evidence if the ALJ provides explicit and
28 legitimate reasons for discounting the opinion. See Lester, 81 F.3d at 830-31 (the opinion of a

1 treating doctor, even if contradicted by another doctor, can only be rejected for specific and
2 legitimate reasons that are supported by substantial evidence in the record); see also Orn, 495
3 F.3d at 632-33 (“Even when contradicted by an opinion of an examining physician that constitutes
4 substantial evidence, the treating physician’s opinion is ‘still entitled to deference.’”) (citations
5 omitted); Social Security Ruling³ 96-2p (a finding that a treating physician’s opinion is not entitled
6 to controlling weight does not mean that the opinion is rejected).

7 The Regulations provide that although ALJs “are not bound by any findings made by
8 [nonexamining] State agency medical or psychological consultants, or other program physicians
9 or psychologists,” ALJs must still “consider [their] findings and other opinions ... as opinion
10 evidence, except for the ultimate determination about whether [a claimant is] disabled,” because
11 such specialists are regarded as “highly qualified ... experts in Social Security disability
12 evaluation.” 20 C.F.R. §§ 404.1527(f)(2)(i), 416.927(f)(2)(i). The Regulations further provide that
13 “[u]nless a treating source’s opinion is given controlling weight, the [ALJ] must explain in the
14 decision the weight given to the opinions of a State agency medical or psychological consultant
15 or other program physician, psychologist, or other medical specialist.” 20 C.F.R. §§
16 404.1527(f)(2)(ii), 416.927(f)(2)(ii). See also SSR 96-6p (“Findings ... made by State agency
17 medical and psychological consultants ... regarding the nature and severity of an individual’s
18 impairment(s) must be treated as expert opinion evidence of nonexamining sources,” and ALJs
19 “may not ignore these opinions and must explain the weight given to these opinions in their
20 decisions.”).

21 On October 12, 2007, Dr. Klein completed a Mental Residual Functional Capacity
22 Assessment (“MRFCA”) form, in which he opined that plaintiff is moderately limited in her abilities
23 to understand, remember, and carry out detailed instructions; maintain attention and concentration
24 for extended periods; respond appropriately to changes in the work setting; be aware of normal

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26 ³ Social Security Rulings (“SSR”) do not have the force of law. Nevertheless, they “constitute
27 Social Security Administration interpretations of the statute it administers and of its own
28 regulations,” and are given deference “unless they are plainly erroneous or inconsistent with the
Act or regulations.” Han v. Bowen, 882 F.2d 1453, 1457 (9th Cir. 1989).

1 hazards and take appropriate precautions; and travel in unfamiliar places or use public
2 transportation. [See AR at 242-43.] In assessing plaintiff's RFC and elaborating on the limitations
3 described above, Dr. Klein specifically opined that plaintiff has adequate memory and
4 understanding for simple one- to two-step tasks; adequate sustained concentration, persistence,
5 and pace for simple one- to two-step tasks; adequate social interaction; and adequate adaptation
6 to change in most work-like settings. [AR at 244.]

7 In the decision, the ALJ summarized some, but not all, of Dr. Klein's opinion. [See AR at
8 14.] Specifically, the ALJ noted that Dr. Klein opined in the MRFCA that plaintiff is moderately
9 limited in her abilities to understand, remember, and carry out detailed instructions and maintain
10 attention and concentration for extended periods [see *id.*], but did not mention that Dr. Klein also
11 found plaintiff moderately limited in her abilities to respond to work setting changes, be aware of
12 hazards, take precautions, travel, and use public transportation. Further, in summarizing Dr.
13 Klein's opinion concerning plaintiff's RFC, the ALJ did not mention the specific limitations identified
14 by Dr. Klein (including that plaintiff can only perform simple one- to two-step tasks). Rather, the
15 ALJ interpreted Dr. Klein's opinion concerning plaintiff's RFC as indicating that she has the mental
16 RFC to "perform simple work." [*id.*] The ALJ asserted in the decision that he relied, in part, on
17 Dr. Klein's opinion in reaching the RFC determination that plaintiff is mentally able to perform only
18 simple work. [*id.*]

19 The Court agrees with plaintiff that the ALJ did not adequately address Dr. Klein's findings.
20 Even though the ALJ discussed some of Dr. Klein's findings and asserted that he relied on his
21 opinion in reaching the RFC determination, because the ALJ ignored and excluded from the RFC
22 determination some of Dr. Klein's specific findings (*i.e.*, that plaintiff is moderately limited in her
23 abilities to respond to work setting changes, be aware of hazards, take precautions, travel, and
24 use public transportation, and that she has the RFC to perform only simple one- to two-step
25 tasks), it appears that the ALJ implicitly rejected those portions of Dr. Klein's opinion without
26 providing any reason for doing so. This constitutes error. See 20 C.F.R. §§ 404.1527(f)(2),
27 416.927(f)(2); SSR 96-8p, at *7 ("The RFC assessment must always consider and address
28 medical source opinions. If the RFC assessment conflicts with an opinion from a medical source,

1 the adjudicator must explain why the opinion was not adopted.”). “Judicial review of an
2 administrative decision is impossible without an adequate explanation of that decision by the
3 administrator.” DeLoatche v. Heckler, 715 F.2d 148, 150 (4th Cir. 1983) (finding that an ALJ’s
4 failure to explain why he disregarded medical evidence prevented “meaningful judicial review”).
5 The ALJ’s failure to expressly explain why he apparently rejected Dr. Klein’s findings as discussed
6 above prevents meaningful judicial review. “Since it is apparent that the ALJ cannot reject
7 evidence for no reason or the wrong reason, an explanation from the ALJ of the reason why
8 probative evidence has been rejected is required so that ... [the] [C]ourt can determine whether
9 the reasons for rejection were improper.” Cotter v. Harris, 642 F.2d 700, 706-07 (3rd Cir. 1981)
10 (internal citation omitted).

11 Defendant asserts that the ALJ’s RFC determination that plaintiff is able to complete simple
12 work sufficiently encompassed Dr. Klein’s opinion that plaintiff can only perform simple one- to
13 two-step tasks. [JS at 9-12.] The Court disagrees. All jobs listed in the Dictionary of Occupational
14 Titles (“DOT”) have general education development (“GED”) levels -- defined as “aspects of
15 education (formal and informal) which are required of the worker for satisfactory job performance.”
16 DOT, Appendix C - Components of the Definition Trailer, 1991 WL 688702 (1991). A job’s GED
17 level pertains to, among other things, the reasoning development level necessary to perform a job,
18 ranging from 1 (the lowest level) to 6 (the highest level). Id. As defendant correctly notes [see JS
19 at 10-11], courts have concluded that a person capable of performing simple repetitive tasks can
20 perform jobs with a GED reasoning level of one (defined in the DOT as requiring an employee to
21 apply “commonsense understanding to carry out simple one- to two-step instructions” and “[d]eal
22 with standardized situations with occasional or no variables in or from these situations
23 encountered on the job”) **and** jobs with a GED reasoning level of two (defined in the DOT as
24 requiring an employee to apply “commonsense understanding to carry out detailed but uninvolved
25 written or oral instructions” and “[d]eal with problems involving a few concrete variables in or from
26 standardized situations”). See, e.g., Meissl v. Barnhart, 403 F.Supp.2d 981, 983-84 (C.D. Cal.
27 2005) (citing Hackett v. Barnhart, 395 F.3d 1168, 1176 (10th Cir. 2005); Money v. Barnhart, 91
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1 Fed.Appx. 210, 214 (3rd Cir. 2004)); DOT, Appendix C - Components of the Definition Trailer,
2 1991 WL 688702 (1991).

3 Here, in concluding that plaintiff has the RFC to perform only simple one- to two-step tasks,
4 it appears that Dr. Klein effectively opined that plaintiff can **only** perform jobs with a GED
5 reasoning level of **one**. Accordingly, the ALJ's determination that plaintiff can do simple work (i.e.,
6 jobs with GED reasoning levels of **one and two**) did not adequately encompass Dr. Klein's
7 opinion, as jobs with a GED reasoning level of two would be too challenging for plaintiff according
8 to Dr. Klein. See Meissl, 403 F.Supp.2d at 983 (noting that a job with a GED reasoning level of
9 two "would involve more detail, as well as a few more variables, than that with a reasoning level
10 of one"); Grisby v. Astrue, 2010 WL 309013, at * 2 (C.D. Cal. Jan. 22, 2010) ("Level 2 reasoning
11 jobs may be simple, but they are not limited to *one- or two-step instructions*. The restriction to jobs
12 involving no more than two-step instructions is what distinguishes Level 1 reasoning from Level
13 2 reasoning.") (emphasis in original). Remand is warranted so that the ALJ can properly consider
14 Dr. Klein's findings.⁴

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18 ⁴ Based on a hypothetical question posed by the ALJ in which plaintiff is mentally able to
19 perform "simple work," but which did not include Dr. Klein's findings that plaintiff is mentally limited
20 to work requiring only simple one- to two-step tasks, the vocational expert testified that plaintiff
21 could perform the work of a hand packager (DOT No. 920.587-018), machine packager (DOT No.
22 920.685-078), and dining room attendant (DOT No. 311.677-018). [See AR at 18, 55-57.] All
three of these jobs require a GED reasoning level of two. See DOT Nos. 311.677-018, 920.587-
018, and 920.685-078.

23 "The hypothetical an ALJ poses to a vocational expert, which derives from the RFC, 'must
24 set out *all* the limitations and restrictions of the particular claimant.' Thus, an RFC that fails to take
25 into account a claimant's limitations is defective." Valentine v. Comm'r Social Sec. Admin., 574
26 F.3d 685, 690 (9th Cir. 2009) (emphasis in original) (quoting Embrey v. Bowen, 849 F.2d 418, 422
27 (9th Cir. 1988)); see also Osenbrock v. Apfel, 240 F.3d 1157, 1163 (9th Cir. 2001) ("An ALJ must
28 propose a hypothetical that is based on medical assumptions supported by substantial evidence
in the record that reflects each of the claimant's limitations."). Because the ALJ did not properly
consider Dr. Klein's findings, the ALJ's RFC determination and his hypothetical questions to the
vocational expert, which did not include all of Dr. Klein's findings (including that plaintiff can only
perform simple one- to two-step tasks), were also defective. Thus, it was error for the ALJ to rely
on the vocational expert's testimony in finding plaintiff able to perform other work at step five.

1 **B. PLAINTIFF’S PHYSICAL IMPAIRMENTS**

2 Plaintiff contends that the ALJ failed to properly consider the evidence concerning her
3 physical impairments. Specifically, plaintiff alleges that the ALJ erred in rejecting the opinion of
4 treating physician Dr. Peter Jalbuena. [JS at 12-16.]

5 Plaintiff’s treatment records reflect that she received treatment at LAC-USC Medical Center
6 for back pain from at least July 2006 to March 2009. [AR at 25-30, 250-60, 265-68, 273, 277.]
7 Dr. Jalbuena was one of the LAC-USC Medical Center physicians who treated plaintiff, apparently
8 from September 2008 to March 2009. [AR at 277, 280.] On July 3, 2009, Dr. Jalbuena completed
9 a Physical Residual Functional Capacity Questionnaire form, in which he diagnosed plaintiff as
10 having degenerative joint disease at L5-S1, stated that he based his findings on an MRI showing
11 bulging of the L5-S1 disc, and noted plaintiff’s symptoms of chronic low back pain and her
12 medication’s side effects of drowsiness. [AR at 277-80.] Dr. Jalbuena also opined, in part, that
13 plaintiff’s impairments had lasted or would last more than 12 months; her symptoms would
14 frequently interfere with her attention and concentration; she is incapable of even “low stress”
15 work; she cannot sit for more than 15 minutes or stand for more than 20 minutes at one time; she
16 can sit and stand/walk each for less than two hours total in an eight-hour workday; she would need
17 unscheduled breaks due to her impairments approximately two or three times during a two hour
18 period; she can never twist, stoop/bend, crouch, or climb ladders; she can occasionally climb
19 stairs; she would experience “good” days and “bad” days due to her impairments; and she would
20 likely need to miss work more than four days per month due to her impairments. [Id.]

21 In the decision, the ALJ rejected Dr. Jalbuena’s opinion concerning plaintiff’s limitations.⁵
22 [AR at 13.] Specifically, the ALJ asserted that although Dr. Jalbuena stated that his opinion was
23 based on plaintiff’s MRI results, “the radiologist characterized the findings as a [m]ild diffuse disc
24 bulge at L5-S1 without central canal or neuroforaminal stenosis.” [AR at 13, quoting AR at 266
25 (emphasis in ALJ opinion).] The ALJ also reasoned that plaintiff’s treatment was “not

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⁵ The ALJ mistakenly referred to Dr. Jalbuena as “Dr. Jalbula” in the decision. [See AR at 13; JS at 14, n.5.]

1 commensurate with the level of disability endorsed by” Dr. Jalbuena. [AR at 13.] The ALJ stated
2 that he instead relied on the opinions of the examining and nonexamining physicians to find that
3 plaintiff was physically able to perform “medium work with occasional stooping, kneeling,
4 crouching and crawling and no climbing of ladders, ropes and scaffolds.” [AR at 13, citing AR at
5 212-15 (opinion of examining physician Dr. Kambiz Hannani), AR at 221-25 (opinion of
6 nonexamining physician Dr. J. H. Becker), AR at 274-75 (opinion of nonexamining physician Dr.
7 Leonore C. Limos).]

8 The Court concludes that the ALJ provided insufficient reasons for rejecting Dr. Jalbuena’s
9 treating opinion. First, to the extent that the ALJ rejected Dr. Jalbuena’s opinion as not being
10 sufficiently supported by the treatment record or the objective medical findings, this was an
11 inadequate basis for rejecting the opinion because it fails to reach the level of specificity required
12 for rejecting a treating source opinion. See Embrey, 849 F.2d at 421-23 (“To say that medical
13 opinions are not supported by sufficient objective findings or are contrary to the preponderant
14 conclusions mandated by the objective findings does not achieve the level of specificity our prior
15 cases have required ... The ALJ must do more than offer his conclusions. He must set forth his
16 own interpretations and explain why they, rather than the doctors’, are correct.”) (footnote omitted).
17 The ALJ failed to explain *why* he concluded that Dr. Jalbuena’s findings are not commensurate
18 with plaintiff’s treatment [see AR at 13]; the ALJ’s conclusory assertion in this regard does not
19 constitute a specific and legitimate reason for rejecting the opinion of a treating physician. See,
20 e.g., Payne v. Astrue, 2009 WL 176071, at *6 (C.D. Cal. Jan. 23, 2009) (finding inadequate an
21 ALJ’s conclusory rejection of a treating physician’s opinion as inconsistent with the medical
22 treatment, where the ALJ did not specify how the treatment record was inconsistent with the
23 physician’s opinion). Further, insomuch as the ALJ independently interpreted plaintiff’s MRI
24 results in suggesting that a “mild” disc bulge could not result in the severity of the limitations
25 assessed by Dr. Jalbuena, that was also erroneous because “[t]he ALJ may not substitute his own
26 layman’s opinion for the findings and opinion of a physician.” Gonzalez Perez v. Sec’y of Health
27 and Human Servs., 812 F.2d 747, 749 (1st Cir. 1987); see also Ferguson v. Schweiker, 765 F.2d

1 31, 37 (3rd Cir. 1985) (holding ALJ erred by “independently reviewing and interpreting the
2 laboratory reports” and thus “impermissibly substituted his own judgment for that of a physician”).

3 Next, although contrary medical opinions based on independent clinical findings may
4 constitute substantial evidence upon which the ALJ may rely in determining the weight to afford
5 a treating physician’s opinion (see Andrews, 53 F.3d at 1041), the ALJ may not properly reject a
6 treating physician’s opinion by merely referencing the contrary findings of another physician. Even
7 when contradicted, a treating physician’s opinion is still entitled to deference, and the ALJ must
8 provide specific and legitimate reasons supported by substantial evidence for rejecting it. See
9 Orn, 495 F.3d at 632-33; SSR 96-2p; see also Valentine, 574 F.3d at 692 (“to reject the opinion
10 of a treating physician ‘in favor of a conflicting opinion of an examining physician[,]’ an ALJ still
11 must ‘make[] findings setting forth specific, legitimate reasons for doing so that are based on
12 substantial evidence in the record’”) (quoting Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
13 2002)). Here, the ALJ erred in failing to expressly explain how Dr. Jalbuena’s findings conflicted
14 with other parts of the medical evidence and why his opinion concerning plaintiff’s physical
15 limitations was rejected in favor of conflicting opinions of the examining and nonexamining
16 physicians. The ALJ’s rejection of Dr. Jalbuena’s opinion without expressly setting forth detailed,
17 legitimate reasons for doing so was improper. See Hostrawser v. Astrue, 364 Fed.Appx. 373, 376-
18 77 (9th Cir. 2010) (citable for its persuasive value pursuant to Ninth Circuit Rule 36-3) (ALJ erred
19 in affording non-treating physicians’ opinions controlling weight over the treating physicians’
20 opinions, where the ALJ did not provide a thorough summary of the conflicting clinical evidence
21 and his interpretations thereof with an explanation as to why his interpretations of the evidence,
22 rather than those of the treating physicians, were correct). Remand is warranted for further
23 consideration of Dr. Jalbuena’s opinion.⁶

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28 ⁶ As the Court finds remand warranted for the reasons set forth above, the Court exercises its discretion not to address plaintiff’s remaining contention of error.

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VI.

REMAND FOR FURTHER PROCEEDINGS

As a general rule, remand is warranted where additional administrative proceedings could remedy defects in the Commissioner's decision. See Harman v. Apfel, 211 F.3d 1172, 1179 (9th Cir. 2000), cert. denied, 531 U.S. 1038 (2000); Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984). In this case, remand is appropriate in order for the ALJ to reconsider the medical findings of Dr. Klein and Dr. Jalbuena. The ALJ is instructed to take whatever further action is deemed appropriate and consistent with this decision.

Accordingly, **IT IS HEREBY ORDERED** that: (1) plaintiff's request for remand is **granted**; (2) the decision of the Commissioner is **reversed**; and (3) this action is **remanded** to defendant for further proceedings consistent with this Memorandum Opinion.

This Memorandum Opinion and Order is not intended for publication, nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.



DATED: December 16, 2010

PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE