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

VALERIE TORRES,  
Plaintiff,

v.

MICHAEL J. ASTRUE,  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,  
Defendant.

) Case No. CV 10-5904 JCG

) **MEMORANDUM OPINION AND  
ORDER**

**I.**

**INTRODUCTION AND SUMMARY**

On August 12, 2010, plaintiff Valerie Torres (“Plaintiff”) filed a complaint against defendant Michael J. Astrue (“Defendant”), the Commissioner of the Social Security Administration, seeking review of a denial of disability insurance benefits (“DIB”) and supplemental security income benefits (“SSI”). [Docket No. 3.]

On March 10, 2011, Defendant filed his answer, along with a certified copy of the administrative record. [Docket Nos. 9-13.]

In sum, having carefully studied, *inter alia*, the parties’ joint stipulation and the administrative record, the Court concludes that, as detailed below, the

1 Administrative Law Judge (“ALJ”) improperly evaluated the opinion of Plaintiff’s  
2 treating physician. The Court thus remands this matter to the Commissioner in  
3 accordance with the principles and instructions enunciated in this Memorandum  
4 Opinion and Order.

5 **II.**

6 **PERTINENT FACTUAL AND PROCEDURAL BACKGROUND**

7 Plaintiff, who was 44 years old on the date of her most recent administrative  
8 hearing, has completed high school and some college. (*See* Administrative Record  
9 (“AR”) at 31, 37, 112, 144, 337.)

10 On January 18, 2007, Plaintiff filed for DIB and SSI, alleging that she has  
11 been disabled since June 1, 2005 due to depression, anxiety, swelling of limbs,  
12 fatigue, trouble sleeping, and lack of concentration. (*See* AR at 60, 112, 120, 134,  
13 139.)

14 On April 1, 2008, Plaintiff, represented by counsel, appeared and testified at a  
15 hearing before an ALJ. (*See* AR at 31-57.) The ALJ also heard testimony from  
16 Sandra Schneider, a vocational expert (“VE”). (*Id.*)

17 On May 8, 2008, the ALJ denied Plaintiff’s request for benefits. (AR at 12-  
18 22.) Applying the well-known five-step sequential evaluation process, the ALJ  
19 found, at step one, that Plaintiff has not engaged in substantial gainful activity since  
20 her alleged onset date. (*Id.* at 15.)

21 At step two, the ALJ found that Plaintiff suffers from severe “mental  
22 depression.” (AR at 16 (emphasis omitted).)

23 At step three, the ALJ determined that the evidence did not demonstrate that  
24 Plaintiff’s impairment, either individually or in combination, met or medically  
25 equaled the severity of any listing set forth in the Social Security regulations.<sup>1/</sup> (AR  
26 at 19.)

27 \_\_\_\_\_  
28 <sup>1/</sup> *See* 20 C.F.R. pt. 404, subpt. P, app. 1.

1 The ALJ then assessed Plaintiff’s residual functional capacity<sup>2/</sup> (“RFC”) and  
2 determined that she has a moderate limitation “on her ability to maintain  
3 concentration and attendance.” (AR at 20 (emphasis omitted).)

4 The ALJ found, at step four, that Plaintiff retained the ability to perform her  
5 past relevant work as a general office worker. (AR at 21.) Thus, the ALJ concluded  
6 that Plaintiff was not suffering from a disability as defined by the Act. (*Id.* at 22.)

7 Plaintiff filed a timely request for review of the ALJ’s decision, which was  
8 denied by the Appeals Council. (AR at 1-3, 8.) The ALJ’s decision stands as the  
9 final decision of the Commissioner.

### 10 III.

#### 11 STANDARD OF REVIEW

12 This Court is empowered to review decisions by the Commissioner to deny  
13 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security  
14 Administration must be upheld if they are free of legal error and supported by  
15 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001, *as*  
16 *amended* Dec. 21, 2001). If the court, however, determines that the ALJ’s findings  
17 are based on legal error or are not supported by substantial evidence in the record,  
18 the court may reject the findings and set aside the decision to deny benefits.  
19 *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*,  
20 242 F.3d 1144, 1147 (9th Cir. 2001).

21 “Substantial evidence is more than a mere scintilla, but less than a  
22 preponderance.” *Aukland*, 257 F.3d at 1035. Substantial evidence is such “relevant  
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25 <sup>2/</sup> Residual functional capacity is what a claimant can still do despite existing  
26 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155  
27 n. 5 (9th Cir. 1989). “Between steps three and four of the five-step evaluation, the  
28 ALJ must proceed to an intermediate step in which the ALJ assesses the claimant’s  
residual functional capacity.” *Massachi v. Astrue*, 486 F.3d 1149, 1151 n. 2 (9th  
Cir. 2007).

1 evidence which a reasonable person might accept as adequate to support a  
2 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276 F.3d  
3 at 459. To determine whether substantial evidence supports the ALJ’s finding, the  
4 reviewing court must review the administrative record as a whole, “weighing both  
5 the evidence that supports and the evidence that detracts from the ALJ’s  
6 conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be affirmed  
7 simply by isolating a specific quantum of supporting evidence.” *Aukland*, 257 F.3d  
8 at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th Cir. 1998)). If the  
9 evidence can reasonably support either affirming or reversing the ALJ’s decision,  
10 the reviewing court “may not substitute its judgment for that of the ALJ.” *Id.*  
11 (quoting *Matney ex rel. Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)).

12 **IV.**

13 **ISSUES PRESENTED**

14 Four disputed issues are presented for decision here:

- 15 1. whether the ALJ properly evaluated Plaintiff’s mental impairments, as  
16 substantiated by the opinion of Plaintiff’s treating psychiatrist, (*see* Joint Stip. at 5-  
17 15, 21-22);
- 18 2. whether the ALJ properly assessed Plaintiff’s credibility, (*id.* at 22-25,  
19 28-30);
- 20 3. whether the ALJ properly determined Plaintiff could perform her past  
21 relevant work, (*id.* at 30-32, 34-35); and
- 22 4. whether the ALJ properly relied on the VE’s testimony when he posed  
23 an incomplete hypothetical. (*Id.* at 35-37, 38-39.)

24 Under the circumstances here, the Court finds the issue of the ALJ’s  
25 evaluation of Plaintiff’s mental impairments to be dispositive of this matter, and  
26 does not reach the remaining issues.

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1 V.

2 **DISCUSSION AND ANALYSIS**

3 A. Evaluation of the Medical Evidence

4 Plaintiff argues that the ALJ “shows total . . . disregard for the report and  
5 opinion of the treating psychiatrist [Hla Hla Yee, M.D. (“Dr. Yee”).]” (Joint Stip. at  
6 6.) Plaintiff contends that the “ALJ fails to give any valid reason for rejecting Dr.  
7 Yee’s reports or for failing to discuss the records from the Roybal Mental Health  
8 Clinic.” (*Id.* at 8.)

9 1. The ALJ Must Provide Specific and Legitimate Reasons  
10 Supported by Substantial Evidence to Reject a Treating  
11 Physician’s Opinion

12 In evaluating medical opinions, Ninth Circuit case law and Social Security  
13 regulations distinguish among the opinions of three types of physicians:

- 14 (1) those who treat the claimant (treating physicians);  
15 (2) those who examine but do not treat the claimant (examining physicians);

16 and

17 (3) those who neither examine nor treat the claimant (non-examining  
18 physicians). *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995, *as amended* April 9,  
19 1996); *see also* 20 C.F.R. §§ 404.1527(d) & 416.927(d) (prescribing the respective  
20 weight to be given the opinion of treating sources and examining sources).

21 “As a general rule, more weight should be given to the opinion of a treating  
22 source than to the opinion of doctors who do not treat the claimant.” *Lester*, 81 F.3d  
23 at 830; *accord Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030, 1036 (9th Cir.  
24 2003). This is so because a treating physician “is employed to cure and has a greater  
25 opportunity to know and observe the patient as an individual.” *Sprague v. Bowen*,  
26 812 F.2d 1226, 1230 (9th Cir. 1987).

27 Where the treating physician’s “opinion is not contradicted by another doctor,  
28 it may be rejected only for ‘clear and convincing’ reasons.” *Benton*, 331 F.3d at

1 1036; *see also Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (“While the  
2 ALJ may disregard the opinion of a treating physician, whether or not controverted,  
3 the ALJ may reject an *uncontroverted* opinion of a treating physician only for clear  
4 and convincing reasons.”) (italics in original).

5 “Even if the treating doctor’s opinion is contradicted by another doctor, the  
6 [ALJ] may not reject this opinion without providing specific and legitimate reasons  
7 supported by substantial evidence in the record[.]” *Lester*, 81 F.3d at 830 (internal  
8 quotation marks and citation omitted); *accord Reddick*, 157 F.3d at 725.

9 The ALJ can meet the requisite specific and legitimate standard “by setting  
10 out a detailed and thorough summary of the facts and conflicting clinical evidence,  
11 stating his interpretation thereof, and making findings.” *Magallanes v. Bowen*, 881  
12 F.2d 747, 751 (9th Cir. 1989) (internal quotation marks and citation omitted).

## 13 2. The ALJ Improperly Evaluated Dr. Yee’s opinion

14 Having carefully reviewed the record and the joint stipulation, the Court is  
15 persuaded that the ALJ’s assessment of Dr. Yee’s opinion regarding Plaintiff’s  
16 mental impairments is not legally sufficient and/or supported by substantial  
17 evidence. Six reasons guide this Court’s determination.

18 First, the ALJ’s conclusion that Dr. Yee’s opinion is unsupported by “her own  
19 treatment notes” is belied by the record. (AR at 18.) Plaintiff received mental health  
20 treatment from Dr. Yee at the Roybal Family Mental Health Center through the Los  
21 Angeles County Department of Mental Health for over a year from January 29, 2007  
22 until at least February 11, 2008. (*See id.* at 257-64 (mental impairment  
23 questionnaire completed on February 11, 2008 by Dr. Yee).) Dr. Yee’s opinion was  
24 based on her treatment of Plaintiff and the opinion of her treatment team, *e.g.*,  
25 therapist Rosa Torres, A.C.S.W., who Plaintiff saw approximately once a week.<sup>3/</sup>

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27 <sup>3/</sup> Although the Court declines to address the ALJ’s assessment of Plaintiff’s  
28 credibility, to the extent the ALJ discounted Plaintiff’s credibility based on the fact

1 (See *id.* at 41-42 (Plaintiff’s testimony that she receives treatment from Dr. Yee and  
2 separate “one-on-one” therapy approximately every week or every other week, and  
3 attends group therapy).)

4 Throughout Dr. Yee’s treatment notes, she recorded the amount of time spent  
5 with Plaintiff during each session, which varied from twenty minutes to over an  
6 hour, (*see, e.g.*, AR at 266, 273), and made detailed notations of her assessment. For  
7 instance, on November 5, 2007, Dr. Yee reported that Plaintiff is “easily irritable,  
8 angry, more isolat[ed],” lacked motivation “to do things,” has poor personal hygiene,  
9 is “tearful” and “preoccupied with her life stressors.” (*Id.* at 273.) Dr. Yee found  
10 Plaintiff’s insight and judgment to be “limited.” (*Id.*) Further, Dr. Yee repeatedly  
11 diagnosed Plaintiff with bipolar disorder and anxiety disorder, not otherwise  
12 specified. (*See, e.g., id.* at 262, 265, 266, 268, 271, 274.) On February 11, 2008, Dr.  
13 Yee prescribed Plaintiff with Geodon, Celexa, and Temazepam, and discontinued  
14 Plaintiff’s prescription of Depakote after she suffered negative side effects from it.<sup>4/</sup>  
15 (*See id.* at 265, 273.) Thus, the Court finds that Dr. Yee’s treatment notes amply  
16 support her opinion. *See Lester*, 81 F.3d at 833 (“The treating physician’s  
17 continuing relationship with the claimant makes him especially qualified to evaluate

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18  
19 that “after seeing Dr. Yee in January 2007,” she had gaps in treatment, “suggest[ing]  
20 that her symptoms and limitations were not as serious as has been alleged,” (AR at  
21 20), the Court notes that the record indicates Plaintiff reported “delays in getting  
22 transportation money from [Los Angeles County welfare services]” and could not  
23 attend treatment for herself because of her son’s treatment and appointments. (*Id.* at  
24 326, 338); *see also Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007) (claimant’s  
failure to seek treatment due to inability to pay cannot support an adverse credibility  
termination).

25 <sup>4/</sup> Geodon is an antipsychotic medication that is used to treat schizophrenia and  
26 the manic symptoms of bipolar disorder. [www.drugs.com](http://www.drugs.com). Celexa is an  
27 antidepressant used to treat depression. *Id.* Temazepam is used to treat insomnia  
28 symptoms. *Id.* Depakote is used to treat various types of seizure disorders and is  
also used to treat the manic phase of bipolar disorders. *Id.*

1 reports from examining doctors, to integrate the medical information they provide,  
2 and to form an overall conclusion as to functional capacities and limitations, as well  
3 as to prescribe or approve the overall course of treatment.”).

4         Second, the ALJ erred in rejecting Dr. Yee’s opinion because the “evidence  
5 clearly shows that [Plaintiff’s] problem, as she herself admitted, is mainly due to her  
6 being the primary caretaker for her son, taking care of her household without  
7 assistance from others and having financial issues.” (AR at 18.) While Dr. Yee  
8 noted Plaintiff’s “many stressors” in her treatment notes, *e.g.*, Plaintiff being a  
9 “single mother” of two kids, having “financial problem[s]” and living in a motel, Dr.  
10 Yee *still* diagnosed Plaintiff with bipolar disorder and anxiety disorder. (*Id.* at 262,  
11 273, 275; *see also id.* at 338 (therapist treatment note reporting that during session  
12 Plaintiff “vent[ed] about struggles as a single parent dealing with son’s [treatment]  
13 and finding out he has ADHD and Asperger’s Disorder”).) The Court fails to see  
14 how Plaintiff’s life difficulties preclude a diagnosis of a clinical mental condition  
15 and resulting limitations here.

16         Accordingly, the ALJ has, in effect, improperly substituted his own  
17 interpretation of the evidence without setting forth sufficient authority or medical  
18 evidence to support his interpretation. *See Tackett v. Apfel*, 180 F.3d 1094, 1102-03  
19 (9th Cir. 1999) (ALJ may not substitute his own interpretation of the medical  
20 evidence for the opinion of medical professionals); *Banks v. Barnhart*, 434 F. Supp.  
21 2d 800, 805 (C.D. Cal. 2006) (“An ALJ cannot arbitrarily substitute his own  
22 judgment for competent medical opinion, and he must not succumb to the temptation  
23 to play doctor and make his own independent medical findings.”) (internal quotation  
24 marks, alterations and citations omitted).

25         Third and similarly, the Court finds that the ALJ’s rejection of Dr. Yee’s  
26 opinion based on Plaintiff’s “interest in applying for work” is not a specific and  
27 legitimate reason. (AR at 18); *see also Napier v. Astrue*, 2009 WL 2058436, at \*9  
28 (E.D. Cal. 2009) (“Plaintiff’s brief return to his former work, his search for work,



1 and his willingness to be retrained reflect his desire to work but do not detract from  
2 his credibility regarding the intensity, persistence, and limiting effects of his  
3 symptoms.”).

4 Fourth, the ALJ presents no evidence to support his skepticism of Dr. Yee’s  
5 credibility and this “skepticism flies in the face of clear circuit precedent.” (AR at  
6 18-19 (“The possibility always exists that a doctor may express an opinion in an  
7 effort to assist a patient with whom he or she sympathizes for one reason or another.  
8 . . . While it is difficult to confirm the presence of such motives, they are more likely  
9 in situations such as this one where the opinion in question departs substantially  
10 from the rest of the evidence of record.”)); *Reddick*, 157 F.3d at 726 (“This  
11 skepticism of a treating physician’s credibility flies in the face of clear circuit  
12 precedent.”); *see also Lester*, 81 F.3d at 832 (holding that an ALJ “may not assume  
13 that doctors routinely lie in order to help patients collect disability benefits”)  
14 (internal quotation marks and citation omitted).

15 Fifth, the ALJ’s adoption of the opinion of non-examining and non-treating  
16 physician C.H. Dudley, M.D. (“Dr. Dudley”), standing alone, does not constitute  
17 “substantial” evidence here. (AR at 19 (ALJ adopting Dr. Dudley’s opinion), *see id.*  
18 at 238-240 (Mental Residual Functional Capacity Assessment check-box form  
19 completed by Dr. Dudley on April 4, 2007)); *Lester*, 81 F.3d at 832 (“In the absence  
20 of record evidence to support it, the nonexamining medical advisor’s testimony does  
21 not by itself constitute substantial evidence that warrants a rejection of . . . the  
22 examining [physician]’s opinion.”); *Erickson v. Shalala*, 9 F.3d 813, 818 n. 7 (9th  
23 Cir. 1993) (“the non-examining physicians’ conclusion, *with nothing more*, does not  
24 constitute substantial evidence[.]”) (internal quotation marks, brackets and citation  
25 omitted) (*italics in original*); *Gallant v. Heckler*, 753 F.2d 1450, 1454 (9th Cir. 1984)  
26 (when the non-treating, non-examining physician’s opinion conflicts with the  
27 conclusions of examining physicians, that conclusion does not constitute substantial  
28 evidence).

1 Sixth, Defendant cites to the opinions of evaluating psychiatrist Norma R.  
2 Aguilar, M.D. (“Dr. Aguilar”) and evaluating physician Gabriel T. Fabella, M.D.  
3 (“Dr. Fabella”) as a basis for the ALJ’s rejection of Dr. Yee’s opinion. (*See Joint*  
4 *Stip.* at 18.) The Court’s review is limited to the reasons *actually cited* by the ALJ in  
5 his decision, specifically, in assigning “no weight” to Dr. Yee’s opinion. (AR at 19);  
6 *see Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (“We review only the reasons  
7 provided by the ALJ in the disability determination and may not affirm the ALJ on a  
8 ground upon which he did not rely.”). However, the ALJ did not rely on Dr. Aguilar  
9 or Dr. Fabella’s opinion in rejecting Dr. Yee’s opinion. (*See generally* AR at 17-  
10 19.)

11 In any event, Dr. Fabella performed an internal medicine consultation and did  
12 not provide an opinion as to Plaintiff’s mental impairments. (*See* AR at 216-20.)  
13 With respect to Dr. Aguilar, she did not review any of Plaintiff’s medical records in  
14 performing her evaluation and her opinion should be afforded minimal weight. *See*  
15 20 C.F.R. § 416.917 (consultative examiners should be provided with necessary  
16 background information regarding the claimant’s condition); *see Ladue v. Chater*,  
17 1996 WL 83880, at \*5 (N.D. Cal. 1996) (error for an ALJ to afford considerable  
18 weight to an examining physician where that physician “lack[s] important  
19 background information regarding plaintiff”).

## 20 VI.

### 21 **REMAND IS APPROPRIATE**

22 This Court has discretion to remand or reverse and award benefits. *McAllister*  
23 *v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989, *as amended* Oct. 19, 1989). Where no  
24 useful purpose would be served by further proceedings, or where the record has been  
25 fully developed, it is appropriate to exercise this discretion to direct an immediate  
26 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004);  
27 *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000, *as amended* May 4, 2000),  
28 *cert. denied*, 531 U.S. 1038 (2000). Where there are outstanding issues that must be

