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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 ROSA MARIE BIZONIA, ) Case No. CV 10-6021 RNB  
12 Plaintiff, )  
13 vs. ) ORDER REVERSING DECISION OF  
14 MICHAEL J. ASTRUE, ) COMMISSIONER AND REMANDING  
15 Commissioner of Social Security, ) FOR FURTHER ADMINISTRATIVE  
16 Defendant. ) PROCEEDINGS  
17 )

18 Plaintiff filed a Complaint herein on August 12, 2010, seeking review of the  
19 Commissioner’s denial of her application for disability insurance benefits. In  
20 accordance with the Court’s Case Management Order, the parties filed a Joint  
21 Stipulation on April 13, 2011. Thus, this matter now is ready for decision.<sup>1</sup>  
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25 <sup>1</sup> As the Court advised the parties in its Case Management Order, the  
26 decision in this case is being made on the basis of the pleadings, the Administrative  
27 Record (“AR”), and the Joint Stipulation (“Jt Stip”) filed by the parties. In  
28 accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has  
determined which party is entitled to judgment under the standards set forth in 42  
U.S.C. § 405(g).

1 **DISPUTED ISSUES**

2 As reflected in the Joint Stipulation, the disputed issues that plaintiff is raising  
3 as the grounds for reversal are as follows:

4 1. Whether the Administrative Law Judge (“ALJ”) erred in  
5 finding at step two that plaintiff’s depression does not even amount to  
6 a legally severe impairment.

7 2. Whether the ALJ erred in rejecting the physical functional  
8 capacity opinions of treating family practitioner Sharma.

9 3. Whether the ALJ’s finding that plaintiff’s testimony  
10 regarding her functional limitations is not credible is supported by  
11 substantial evidence.

12 **DISCUSSION**

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14 With respect to Disputed Issue No. 3, the Court concurs with the Commissioner  
15 that reversal is not warranted based on the ALJ’s alleged failure to make a proper  
16 adverse credibility determination. The Court finds that the reasons given by the ALJ  
17 at AR 23-24 were sufficiently specific to support the ALJ’s rejection of plaintiff’s  
18 excess pain and subjective symptom testimony. See, e.g., Burch v. Barnhart, 400  
19 F.3d 676, 680-81 (9th Cir. 2005) (ALJ may properly rely on inconsistency between  
20 claimant’s subjective complaints and objective medical findings, and lack of  
21 consistent treatment); Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) (ALJ  
22 may properly consider inconsistencies either in claimant’s testimony or between  
23 claimant’s testimony and claimant’s conduct, claimant’s daily activities, and  
24 claimant’s work record); Morgan v. Comm’r of Soc. Sec., 169 F.3d 595, 600 (9th Cir.  
25 1999) (ALJ may properly consider conflict between claimant’s testimony of  
26 subjective complaints and objective medical evidence in the record, and may properly  
27 rely on contradictions between claimant’s reported limitations and claimant’s daily  
28 activities); Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (ALJ may properly

1 rely on inconsistencies in the claimant’s testimony and fact that only conservative  
2 treatment had been prescribed); Orteza v. Shalala, 50 F.3d 748, 750 (9th Cir. 1995)  
3 (ALJ may properly rely on lack of objective evidence to support claimant’s subjective  
4 complaints and failure to pursue treatment); Flaten v. Secretary of Health & Human  
5 Svcs., 44 F.3d 1453, 1464 (9th Cir. 1995) (ALJ may properly rely on minimal  
6 medical treatment for back pain).

7 With respect to Disputed Issue No. 2, for the reasons stated by the  
8 Commissioner (see Jt Stip at 28-32), the Court finds that reversal is not warranted  
9 based on the ALJ’s alleged error in rejecting the opinion of Dr. Sharma as to  
10 plaintiff’s physical functional capacity, as reflected on the Multiple Impairment  
11 Questionnaire form dated June 29, 2008. (See AR 281-87.) See, e.g., Valentine v.  
12 Comm’r of Social Sec. Admin., 574 F.3d 685, 692-93 (9th Cir. 2009) (holding that  
13 contradiction between a treating physician’s opinion and his treatment notes  
14 constitutes a specific and legitimate reason for rejecting the treating physician’s  
15 opinion); Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005) (holding that  
16 contradiction between treating physician’s assessment and clinical notes justifies  
17 rejection of assessment); Batson v. Commissioner of Social Security Administration,  
18 359 F.3d 1190, 1195 (9th Cir. 2004) (noting that “an ALJ may discredit treating  
19 physicians’ opinions that are conclusory, brief, and unsupported by the record as a  
20 whole, . . . or by objective medical findings”); Thomas, 278 F.3d at 957 (“The ALJ  
21 need not accept the opinion of any physician, including a treating physician, if that  
22 opinion is brief, conclusory, and inadequately supported by clinical findings.”);  
23 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (“When confronted with  
24 conflicting medical opinions, an ALJ need not accept a treating physician’s opinion  
25 that is conclusory and brief and unsupported by clinical findings.”); Morgan, 169  
26 F.3d at 602 (holding that a treating or examining physician’s opinion based on the  
27 plaintiff’s own complaints may be disregarded if the plaintiff’s complaints have been  
28 properly discounted); Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997) (ALJ

1 may legitimately accord less weight to, or reject, the opinion of a doctor based on the  
2 self reporting of an unreliable claimant where that claimant’s complaints have been  
3 properly discounted); Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (holding that  
4 an ALJ may reject check-off forms that do not contain an explanation of the bases for  
5 their conclusions); Johnson, 60 F.3d at 1433 (holding that contradiction between  
6 doctor’s treatment notes and finding of disability was valid reason to reject treating  
7 physician’s opinion).

8         However, with respect to Disputed Issue No. 1, the Court concurs with plaintiff  
9 that the ALJ erred in finding at step two that plaintiff’s depression does not even  
10 amount to a legally severe impairment. A psychiatric impairment may be found “not  
11 severe” at step two of the Commissioner’s sequential evaluation process only where  
12 the impairment “has no more than a minimal effect” on the claimant’s mental ability  
13 to perform basic work activities. See 20 C.F.R. § 416.921(a). Basic mental work  
14 activities include understanding, carrying out, and remembering simple instructions;  
15 use of judgment; responding appropriately to supervision, co-workers and usual work  
16 situations; and dealing with changes in a routine work setting. See 20 C.F.R. §  
17 416.921(b); Social Security Ruling<sup>2</sup> (“SSR”) 85-28. If a finding of non-severity is not  
18 “clearly established by medical evidence,” adjudication must continue through the  
19 sequential evaluation process. See SSR 96-3p; see also Yuckert v. Bowen, 841 F.2d  
20 303, 306-07 (9th Cir. 1988); McDonald v. Secretary of Health & Human Svcs., 795  
21 F.2d 1118, 1124-25 (1st Cir. 1986).

22         Here, in finding that plaintiff’s “depressive disorder did not significantly limit  
23 her ability to perform basic work activities, and was therefore non-severe within the  
24 meaning of the Regulations” (see AR 21), the ALJ implicitly rejected the opinion of  
25 plaintiff’s treating physician that plaintiff was incapable of even tolerating “low  
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27                 <sup>2</sup> Social Security Rulings are binding on ALJs. See Terry v. Sullivan, 903  
28 F.2d 1273, 1275 n.1 (9th Cir. 1990).

1 stress” (see AR 286), the opinion of the consultative examiner (Dr. Conover) based  
2 on his own examination and clinical findings that plaintiff inter alia had a current  
3 Global Assessment of Functioning (“GAF”) score of 60<sup>3</sup> (see AR 228), and the  
4 opinion of the State agency physician (Dr. Tashjian) based on his review of plaintiff’s  
5 medical records (including Dr. Conover’s examination report) that plaintiff inter alia  
6 was moderately impaired in the ability to maintain attention and concentration for  
7 extended periods and moderately impaired in the ability to respond appropriately to  
8 changes in the work setting (see AR 245-46), which opinion subsequently was  
9 affirmed by the reviewing State agency physician (Dr. Dalton) (see AR 264). For the  
10 reasons stated by plaintiff (see Jt Stip at 10-14), the Court finds that the ALJ failed  
11 to provide legally sufficient reasons, supported by the evidence of record, for  
12 rejecting these opinions.

13 Moreover, the Court disagrees with the Commissioner that the ALJ’s step two  
14 finding that plaintiff had other severe impairments rendered moot the issue of whether  
15 the ALJ erred in making his non-severity finding with respect to plaintiff’s depressive  
16 disorder. Dr. Conover’s report evidences that he also was of the opinion that plaintiff  
17 would have difficulty multi-tasking and was limited to “attending to one item at a  
18 time.” (See AR 228). Consistent with this opinion, Dr. Tashjian opined that plaintiff  
19 was moderately limited in the ability to understand and remember detailed  
20 instructions and moderately limited in the ability to carry out detailed instructions.  
21 While these other opinions to the effect that plaintiff’s mental impairment limited her  
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23 <sup>3</sup> A GAF score of 60 is indicative of “[m]oderate symptoms (*e.g., flat*  
24 *affect and circumstantial speech, occasional panic attacks*) or moderate difficulty in  
25 social, occupational, or school functioning (*e.g., few friends, conflicts with peers or*  
26 *co-workers*).” By way of contrast, the GAF range for “absent or minimal symptoms”  
27 is 81-90, the GAF range for “no more than slight impairment in social, occupational,  
28 or school functioning” is 71-80, and the range for “mild symptoms” is 61-70. See  
American Psychiatric Association, Diagnostic and Statistical Manual of Mental  
Disorders, 32 (4th ed.).

1 to understanding, carrying out, and remembering simple instructions were not  
2 inconsistent with the ALJ's non-severity finding, they were inconsistent with the  
3 ALJ's failure to include any mental limitations in his Residual Functional Capacity  
4 ("RFC") assessment. Yet nowhere in the section of his decision explaining the basis  
5 for his RFC assessment did the ALJ even purport to provide any rationale for his  
6 failure to include any mental limitations in that assessment.

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8 **CONCLUSION AND ORDER**

9 As to the issue of the appropriate relief, the law is well established that the  
10 decision whether to remand for further proceedings or simply to award benefits is  
11 within the discretion of the Court. See, e.g., Salvador v. Sullivan, 917 F.2d 13, 15  
12 (9th Cir. 1990); McAllister, 888 F.2d at 603; Lewin v. Schweiker, 654 F.2d 631, 635  
13 (9th Cir. 1981). Remand is warranted where additional administrative proceedings  
14 could remedy defects in the decision. See, e.g., Kail v. Heckler, 722 F.2d 1496, 1497  
15 (9th Cir. 1984); Lewin, 654 F.2d at 635. Remand for the payment of benefits is  
16 appropriate where no useful purpose would be served by further administrative  
17 proceedings, Kornock v. Harris, 648 F.2d 525, 527 (9th Cir. 1980); where the record  
18 has been fully developed, Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986);  
19 or where remand would unnecessarily delay the receipt of benefits, Bilby v.  
20 Schweiker, 762 F.2d 716, 719 (9th Cir. 1985).

21 The Court has concluded that this is not an instance where no useful purpose  
22 would be served by further administrative proceedings; rather, additional  
23 administrative proceedings still could remedy the defects in the ALJ's decision.

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1           Accordingly, pursuant to sentence four of 42 U.S.C. § 405(g), IT IS HEREBY  
2 ORDERED that Judgment be entered reversing the decision of the Commissioner of  
3 Social Security and remanding this matter for further administrative proceedings.<sup>4</sup>  
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5 DATED: May 3, 2011  
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A handwritten signature in dark ink, appearing to read "Robert N. Block", is written over a light-colored rectangular background.

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8 ROBERT N. BLOCK  
9 UNITED STATES MAGISTRATE JUDGE  
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28           <sup>4</sup> It is not the Court's intent to limit the scope of the remand.