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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NORMA RAMIREZ,)	Case No. ED CV 09-1371-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

I.

INTRODUCTION

Before the Court is Plaintiff's appeal of a decision by Defendant Social Security Administration ("the Agency"), denying her applications for Disability Insurance benefits ("DIB") and Supplemental Security Income ("SSI"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred in failing to properly consider: 1) lay witness testimony; 2) a treating clinician's opinion; 3) the opinions of two treating psychiatrists; 4) a state reviewing psychiatrist's functional assessment; 5) a treating psychiatrist's functional assessment; and 6) the severity of Plaintiff's mental impairment. She claims further that he failed to pose a complete

1 hypothetical question to the vocational expert and also erred when he
2 determined that she could perform her past relevant work as an
3 accounting clerk. For the following reasons, the Court concludes that
4 the ALJ erred in his treatment of the mental health evidence and
5 remands for further proceedings consistent with this opinion.

6 II.

7 SUMMARY OF PROCEEDINGS

8 Plaintiff applied for DIB and SSI on April 9, 2007, alleging that
9 she had been unable to work since March 31, 2001, because of major
10 depression, a panic disorder, anxiety, and pain. (Administrative
11 Record ("AR") 131-39.) The Agency denied the applications initially
12 and on reconsideration. (AR 64-75.) Plaintiff then requested and was
13 granted a hearing before an ALJ. (AR 78-82.) Plaintiff appeared with
14 counsel and testified at the hearing on October 16, 2008. (AR 21-33.)
15 On April 3, 2009, the ALJ issued a decision denying benefits. (AR 7-
16 20.) Plaintiff appealed to the Appeals Council, which denied review.
17 (AR 1-6.) She then commenced the instant action.

18 III.

19 DISCUSSION

20 A. Lay Witness Testimony

21 In her first claim of error, Plaintiff contends that the ALJ
22 erred by failing to provide germane reasons for rejecting the written
23 "testimony" of her daughter, Terry Ramirez. (Joint Stip. at 3-5.)
24 The Court finds this claim to be without merit.

25 An ALJ must consider lay witness testimony. *Stout v. Comm'r,*
26 *Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006); *Smolen v.*
27 *Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996); 20 C.F.R.
28 §§ 404.1513(d)(4),(e). Nevertheless, an ALJ need only give reasons

1 that are "germane" to the testimony in order to reject it. *Bayliss v.*
2 *Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005).

3 In an August 13, 2007 Third Party Function Report, Plaintiff's
4 daughter stated, among other things, that Plaintiff needed to be
5 reminded to take her medicine; only rarely cooked hot meals because
6 she forgot what she was doing and fell asleep with the food on the
7 stove; got very nervous when driving a car; could not pay bills or
8 write out checks; panicked when around a crowd of people; and was
9 limited in her ability to lift, stand, walk, and climb stairs. (AR
10 241-44.) She also stated that Plaintiff did not handle stress well
11 and lacked the patience to concentrate. (AR 246.) These statements
12 closely mirrored Plaintiff's own statements on a form she submitted to
13 the Agency the same day.¹ (AR 247-54.)

14 The ALJ rejected the daughter's statements because they mirrored
15 Plaintiff's, which the ALJ found to be incredible. (AR 18-20.)
16 Plaintiff has not challenged the ALJ's credibility finding, thus, the
17 Court accepts it. Where, as here, the lay witness testimony mirrors
18 the claimant's testimony and the claimant is found to be not credible,
19 the ALJ may reject the lay witness testimony for that reason alone.
20 *See Valentine v. Comm'r, Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir.
21 2009) (holding that ALJ gave germane reason for rejecting claimant's
22 wife's testimony where it was similar to claimant's own complaints
23 that were properly rejected); *see also Cleveland v. Astrue*, 2010 WL
24 1678294, at *8 (C.D. Cal. Apr. 23, 2010) (ALJ's failure to expressly
25 provide reason for rejecting lay witness statements was harmless error
26

27 ¹ Plaintiff concedes that her daughter prepared both reports.
28 (Joint Stip. at 4.)

1 where statements mirrored claimant's testimony that was properly found
2 not credible). As such, the ALJ's rejection of the daughter's
3 testimony is affirmed.

4 B. The Mental Health Evidence

5 The ALJ concluded that Plaintiff did not suffer from a severe
6 mental impairment. (AR 15-17.) In claims two through seven,
7 Plaintiff takes issue with the ALJ's findings in this regard. She
8 contends, among other things, that the ALJ did not provide legally
9 sufficient reasons for rejecting various physicians' opinions and, as
10 a consequence, erred in finding that Plaintiff's mental impairment was
11 not severe. For the following reasons, the Court concludes that the
12 ALJ erred.

13 In August 2000, Plaintiff was driving a car for work when she was
14 involved in an accident. (AR 375.) Thereafter, she complained of
15 depression and anxiety and obtained treatment, including therapy and
16 medication, from psychiatrist Herbert Marshak and psychologist Roland
17 Chabot between March 2001 and February 2002. (AR 378-80.) On January
18 14, 2002, Dr. Chabot diagnosed her with major depressive disorder,
19 single episode, and assigned a Global Assessment of Functioning
20 ("GAF") score of 50. (AR 378.)

21 In May 2002, a worker's compensation examiner, Dr. Donald
22 Feldman, conducted a mental status evaluation of Plaintiff, which
23 revealed that she was oriented, dressed appropriately, and that her
24 speech and thought processes were normal. (AR 382.) Dr. Feldman
25 determined that Plaintiff's psychiatric disability was "zero to
26 slight." (AR 389.) He believed that she would have a "slight
27 disability" in relating to people and influencing people, making
28 generalizations, evaluations or decisions without supervision, and

1 accepting and carrying out responsibility for directions, control and
2 planning. (AR 389.) He concluded that, from a psychiatric
3 perspective, Plaintiff was "fully capable of her usual and customary
4 work." (AR 389.)

5 In July 2003, Arthur Gutierrez, a social worker, conducted an
6 outpatient assessment of Plaintiff at Imperial County Behavioral
7 Health Services. (AR 339-42.) Plaintiff reported to Gutierrez that
8 she had been taking Paxil, an anti-depressant, for two years. (AR
9 339.) Though her mental health status was largely unremarkable, she
10 complained of a depressed and anxious mood and problems with worries,
11 memory, concentration, disruptive sleep, muscle tension, and fatigue.
12 (AR 340, 341.) Gutierrez diagnosed major depressive disorder,
13 recurrent, severe, panic disorder without agoraphobia, and generalized
14 anxiety disorder. (AR 341.) He assigned a GAF score of 50. (AR
15 341.) On September 12, 2003, an Imperial County Behavioral Health
16 Services "Patient Progress Record" set forth the identical diagnosis.
17 (AR 356.)

18 In January 2004, Dr. M. Becraft, a state agency psychiatrist,
19 reviewed Plaintiff's medical records at the request of the Agency.
20 (AR 328-37.) He found that the medical evidence did not support a
21 finding of an impairment *before* Plaintiff's date last insured of March
22 2002, but disagreed with Dr. Feldman's determination that she had no
23 impairment because it was inconsistent with her reported social
24 limitations and panic attacks. (AR 337.) Dr. Becraft found that
25 therapy had improved Plaintiff's condition but, nevertheless,
26 determined that she would be moderately limited in her ability to
27 understand, remember, and carry out detailed instructions, and in her
28 ability to interact appropriately with the public. (AR 333-34.) Dr.

1 Becraft concluded that Plaintiff would be limited to "[non-public
2 simple repetitive tasks] for now." (AR 337.)

3 On March 3, 2006, Plaintiff underwent an initial assessment at
4 the Los Angeles County Department of Mental Health. (AR 612-17.) It
5 was noted that Plaintiff had been taking Paxil, Buspar (an anti-
6 anxiety medication), and Seroquel (an anti-psychotic medication) for
7 more than a year and that these medications were "effective." (AR
8 613.) Plaintiff's grooming, speech, orientation, intellectual
9 functioning, and thought process were normal, though her immediate
10 memory was impaired and she complained that she "hears doorbells" and
11 "see[s] shadows." (AR 616.) Plaintiff was diagnosed with a major
12 depressive disorder, recurrent, with psychotic features; and a panic
13 disorder with agoraphobia. (AR 617.) She was not given a GAF score.²

14 On September 28, 2006, consultative psychiatrist Dr. Mehboob Ali
15 Makhani evaluated Plaintiff. (AR 621-24.) He noted that Plaintiff's
16 appearance and behavior were unremarkable, her thought processes were
17 linear and goal directed with no evidence of hallucinations or
18 delusions, she was oriented, and she demonstrated appropriate
19 judgment. (AR 622-23.) He diagnosed depressive disorder, not
20 otherwise specified, with a "rule-out" diagnosis for major depressive
21 disorder, adjustment disorder, and mood disorder. (AR 623.) Dr.
22 Makhani assessed Plaintiff's GAF at between 60 and 65. (AR 623.) He
23 concluded that she would have no work-related limitations as a result
24 of her psychiatric condition. (AR 623.) Based on Dr. Makhani's

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26 ² Though the ALJ found (and the parties seem to agree) that the
27 unnamed clinician assessed a GAF score of 30, (AR 16), the record does
28 not support this finding. In fact, the clinician did not indicate a
GAF score, rather, he or she wrote "30 x NO" under "DMH Dual Diagnosis
Code," the meaning of which the parties have not addressed. (AR 617.)

1 opinion, state agency reviewing psychiatrist Dr. M. G. Salib also
2 concluded in December 2006 that Plaintiff had no functional
3 limitations due to her mental impairment. (AR 641-51.)

4 On May 14, 2007, consulting psychiatrist Dr. Romualdo Rodriguez
5 evaluated Plaintiff and found that her appearance, behavior, and
6 thought processes were all unremarkable. (AR 704-705.) Dr. Rodriguez
7 made no psychiatric diagnosis and concluded that Plaintiff had no
8 functional limitations from a psychiatric standpoint. (AR 706.) Dr.
9 Loomis, a state agency reviewing psychiatrist, concurred on May 21,
10 2007, finding no psychiatric impairment. (AR 714.)

11 On January 23, 2008, treating psychiatrist Dr. Maged Estafan
12 submitted a check-the-box form to Plaintiff's counsel, in which he
13 indicated that Plaintiff had "extreme" limitations (meaning that
14 Plaintiff had no useful ability to function) in almost every area of
15 functioning, including the ability to understand and remember very
16 short and simple instructions. (AR 811-12.) Dr. Estafan found that
17 Plaintiff's ability to maintain socially appropriate behavior would be
18 moderately limited and her ability to set realistic goals would be
19 markedly limited. (AR 811-12.)

20 In his April 3, 2009 decision, the ALJ found that the objective
21 medical evidence did not support Plaintiff's allegations that she
22 could not work due to depression and anxiety. (AR 15.) He noted the
23 reports of examining psychiatrists Dr. Feldman, Dr. Makhani, and Dr.
24 Rodriguez, in which they concluded that Plaintiff was not functionally
25 impaired. (AR 15-17.) He also noted social worker Gutierrez's July
26 2003 diagnosis of severe, recurrent major depression, but pointed out
27 that Plaintiff treated it with only monthly counseling at Imperial
28 County Behavioral Health Services from July to November 2003. (AR

1 16.) As for the March 2006 Los Angeles County Department of Mental
2 Health assessment, the ALJ deemed it "noteworthy," but determined
3 that, because Plaintiff received only a few months of therapy at the
4 facility, the condition had not lasted for the requisite 12 months.
5 (AR 16.) The ALJ expressly rejected the form submitted by Dr. Estafan
6 in January 2008, (AR 811-12), because it was "completed by an
7 unidentifiable person and there is no treating or progress records to
8 support this assessment." (AR 17.) The ALJ failed to mention Dr.
9 Becraft's January 2004 assessment. Having found that Plaintiff had no
10 severe mental impairment, the ALJ determined that she retained the
11 residual functional capacity to perform light work, with some
12 additional postural and environmental restrictions, but with no
13 restrictions due to mental limitations. (AR 17.)

14 1. Arthur Gutierrez's Opinion

15 Plaintiff argues that the ALJ was required to either accept or
16 reject social worker Arthur Gutierrez's July 2, 2003 opinion,
17 including the GAF score of 50.³ In her view, Gutierrez's opinion was
18 entitled to the same weight as a doctor's because Gutierrez was
19 working closely with a psychiatrist from the clinic when he was
20 treating Plaintiff. (Joint Stip. at 7-9.)

21 As an initial matter, the Court rejects Plaintiff's invitation to
22 find that, because Gutierrez was "working in conjunction with" Dr.
23 Brolaski at the time of the assessment, Gutierrez should be considered
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25 ³ A GAF score of 41-50 indicates "[s]erious symptoms (e.g.,
26 suicidal ideation, severe obsessional rituals, frequent shoplifting)
27 OR any serious impairment in social, occupational, or school
28 functioning (e.g., no friends, unable to keep a job)." American
Psychiatric Association, Diagnostic and Statistical Manual of Mental
Disorders at 34 (4th Ed. 2000).

1 a treating physician whose opinion is entitled to controlling weight.
2 (Joint Stip. at 8-9.) The general rule is that a social worker/
3 therapist is not entitled to treating physician status. See, e.g., 20
4 C.F.R. §§ 416.913(a)(1) and (3); *Gomez v. Chater*, 74 F.3d 967, 971
5 (9th Cir. 1996). Though there is an exception to this general rule
6 for those rare circumstances where a therapist is working so closely
7 with a doctor that the therapist's treatment is merely an extension of
8 the doctor's, *Gomez*, 74 F.3d at 971 (holding opinion of a nurse
9 practitioner could be viewed as an acceptable medical source where she
10 acted so "closely under the supervision" of the treating physician her
11 opinion should be "properly considered as part of the opinion" of the
12 physician), there is no evidence that that type of doctor-therapist
13 relationship existed here. It appears that Gutierrez conducted
14 Plaintiff's intake interview on his own and the assessment form he
15 filled out in conjunction with that interview was not co-signed by Dr.
16 Brolaski or any other doctor. (AR 339-42.) The fact that Dr.
17 Brolaski co-signed Plaintiff's "client plan" on July 24, 2003, almost
18 three weeks after Gutierrez completed it, does not change the
19 analysis. Further, there is no evidence that thereafter Gutierrez
20 worked with or under the close supervision of Dr. Brolaski in treating
21 Plaintiff or in preparing reports.

22 That being the case, the ALJ was not required to grant the same
23 deference to Gutierrez's opinion that he would grant to a doctor's
24 opinion. See Social Security Ruling ("SSR") 06-03p (citing 20 C.F.R.
25 §§ 404.1527(d), 416.927(d)); see also *Thomas v. Astrue*, 2009 WL
26 151488, at *3 (C.D. Cal. Jan. 21, 2009) ("[T]he reports of licensed
27 clinical social workers are considered 'other sources of evidence, not
28 evidence from an 'acceptable medical source.'"). Rather, he was only

1 required to explain the weight given to the opinion in sufficient
2 detail so that Plaintiff (and the Court) could understand it. SSR 06-
3 03p.

4 The ALJ fulfilled that obligation here. He read and considered
5 the social worker's opinion, noting that Plaintiff's affect was flat
6 and her mood was depressed, but that she was oriented times three and
7 that she denied hallucinations, delusions, or paranoia. (AR 16.) The
8 ALJ also noted that, despite Gutierrez's diagnosis of severe major
9 depression, recurrent, Plaintiff received only monthly counseling and
10 only from July to November 2003. (AR 16.) These were sufficient
11 reasons to discount the social worker's opinion under SSR 06-03p. As
12 such, this claim does not merit remand or reversal.⁴

13 2. The Imperial County Treating Psychiatrist's Opinion

14 Plaintiff argues that the ALJ erred by failing to address a
15 diagnosis contained in a September 12, 2003 Imperial County Behavioral
16 Health Services patient progress record. (Joint Stip. at 16-17.) The
17 psychiatrist, whose name is illegible, reached the same findings as
18 Gutierrez, i.e., that Plaintiff had a GAF of 50 and that he suffered
19 from a major depressive disorder, a panic disorder, and a generalized
20 anxiety disorder. (AR 356.) Though the ALJ erred when he failed to
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22 ⁴ The ALJ's failure to specifically discuss Gutierrez's GAF
23 score of 50 was not error. The ALJ was not required to discuss every
24 piece of evidence, only significant, probative evidence. *Howard ex*
25 *rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003); *Vincent*
26 *v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984). An individual GAF
27 score--particularly one from a social worker--does not fall into this
28 category. See, e.g., *Mitchell v. Astrue*, 2010 WL 1994695, at *9 (C.D.
Cal. May 14, 2010) (concluding ALJ did not err in failing to
separately discuss consultative psychiatrist's GAF rating of
claimant); *Alvarez v. Barnhart*, 2002 WL 31466411, at *8 (W.D. Tex.
Oct. 2, 2002) (finding ALJ's failure to mention GAF score not
reversible error).

1 discuss this assessment, the Court concludes that the error was
2 harmless error.

3 An ALJ's failure to address pertinent evidence is harmless if the
4 error did not affect the outcome of the case. See *Stout*, 454 F.3d at
5 1055-56 (defining harmless error in the context of social security
6 cases as one not affecting the ultimate determination of disability).
7 The medical record Plaintiff raises in issue here appears to have been
8 completed by a psychiatrist (the same illegible signature appears on a
9 medication record sheet under "doctor's initials" (AR 343)), though
10 the record does not clarify who the doctor is or whether he or she had
11 a treating relationship with Plaintiff. Thus, the evidence is not so
12 compelling as to require remand. Moreover, it is not clear whether
13 the September 2003 diagnosis was simply copied from Gutierrez's July
14 2003 assessment--the second page of the record states "See Eval. 7-2-
15 03 for details" (AR 356)--or whether it was based on independent
16 findings by the doctor.

17 Even assuming that the psychiatrist in question had an ongoing
18 treating relationship with Plaintiff, the ALJ was not bound to give
19 controlling weight to the opinion because it was not supported by
20 treatment records and was not consistent with other substantial
21 evidence in the record. See *Orn v. Astrue*, 495 F.3d 625, 631 (9th
22 Cir. 2007). Here, the unknown psychiatrist's diagnosis was plainly
23 contradicted by the opinions of examining psychiatrists Feldman,
24 Makhani, and Rodriguez. Moreover, as the ALJ pointed out, Plaintiff
25 received only five months of treatment at this facility in 2003. (AR
26 16, 339-63.) Thus, it is safe to assume that Plaintiff's condition
27 was not so debilitating as to render her disabled.

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1 Though the ALJ should have discussed the report, his failure to
2 do so does not warrant remand where, as here, the report does not
3 establish that Plaintiff had an ongoing condition that rendered her
4 disabled and, further, where it appears to merely repeat the findings
5 of an earlier evaluation, which was not material. *See, e.g., Howard,*
6 341 F.3d at 1012 (holding ALJ's failure to discuss treatment
7 provider's opinion not error where review was based on earlier report
8 that ALJ did discuss). For these reasons, this claim is without
9 merit.

10 3. The Los Angeles County Treating Psychiatrist's Opinion

11 Plaintiff argues that the ALJ failed to properly consider a March
12 2006 assessment from a doctor at the Los Angeles County Department of
13 Mental Health. (Joint Stip. at 17-19.) For the following reasons,
14 the Court agrees that the ALJ erred.⁵

15 A treating doctor's opinion is given more weight than a non-
16 treating doctor's opinion. *Orn,* 495 F.3d at 632 (citing *Lester v.*
17 *Chater,* 81 F.3d 821, 830 (9th Cir. 1995)). Even where the treating
18 doctor's opinion is contradicted by another doctor, the ALJ may not
19 reject it without providing specific and legitimate reasons for doing
20 so that are supported by substantial evidence. *Id.*

21 Here, in 2006, a Los Angeles County Mental Health Department
22 doctor diagnosed Plaintiff with major depressive disorder with
23 psychotic features, noting Plaintiff's complaints of auditory and
24 visual hallucinations. (AR 617.) The ALJ found this assessment to be

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26 ⁵ Plaintiff argues that the assessment was carried out by a
27 psychiatrist. (Joint Stip. at 17-19.) The provider's signature is
28 illegible, but it appears that he or she was a psychologist, not a
psychiatrist, judging by the letters "PSYD" next to the signature.
(AR 617.) Either way, it does not affect the Court's analysis here.

1 "noteworthy," but found that it was not supported by the medical
2 evidence because her treatment consisted of only a few months of
3 therapy and, thus, the condition did not last for 12 months or more.
4 (AR 16.) As Plaintiff points out, however, her treatment in Los
5 Angeles ended when she moved to Riverside County. Thereafter, the
6 record shows that she began treatment with Riverside County Department
7 of Mental Health in September 2006 and continued to receive treatment
8 through February 2008. (Joint Stip. at 18-19; AR 718-19, 721-33, 814-
9 30.) Thus, the ALJ's justification for rejecting the Los Angeles
10 County doctor's opinion--which undermined the ALJ's finding that
11 Plaintiff's mental impairment was not "severe"--does not withstand
12 scrutiny. Accordingly, the issue must be remanded for
13 reconsideration.

14 4. Dr. Becraft's Opinion

15 Plaintiff contends that the ALJ's failure to consider Dr.
16 Becraft's January 14, 2004 mental residual functional capacity
17 assessment was error. (Joint Stip. at 19-21.) For the following
18 reasons, the Court agrees.

19 Although an ALJ is not bound by the findings of an agency
20 physician, he "must consider" such findings and must explain the
21 weight he gives to them. 20 C.F.R. § 404.1527(f)(2)(I); SSR 96-6p.
22 Here, Dr. Becraft found that Plaintiff would have moderate limitations
23 in her ability to understand, remember, and carry out detailed
24 instructions, and in her ability to interact appropriately with the
25 public, and concluded that she should be limited to non-public simple
26 repetitive tasks. (AR 333-34, 337.) In contrast to Dr. Becraft's
27 findings, the ALJ found no functional limitations as a result of
28 Plaintiff's alleged mental impairment. (AR 17.) This was error.

1 The Agency argues that the ALJ's error was harmless, apparently
2 because it believes that Dr. Becraft's opinion was "not probative of
3 disability during the period under review" and because other state
4 agency physicians subsequently found that Plaintiff had no
5 determinable mental impairment or functional limitations. (Joint
6 Stip. at 12, 13.) Although an ALJ's failure to address a reviewing
7 physician's opinion may be harmless error when the ALJ's opinion is
8 consistent with that opinion, *see, e.g., Tibbs v. Astrue*, 2008 WL
9 2705175, at *7-8 (C.D. Cal. July 7, 2008), the Court cannot find the
10 error harmless here.

11 First, the ALJ did not reject Dr. Becraft's opinion for the
12 reasons now suggested by the Agency and the Court cannot look beyond
13 the four corners of the ALJ's decision in determining why he rejected
14 it. *See Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003).
15 Second, the Agency appears to overlook the fact that Plaintiff applied
16 for both DIB and SSI. The evidence of disability after her date last
17 insured (March 2002) would be material to the SSI application. *See,*
18 *e.g., Armstrong v. Comm'r, Soc. Sec. Admin.*, 160 F.3d 587, 589 (9th
19 Cir. 1998) (noting ALJ granted SSI application after determining that
20 claimant became disabled after date last insured). Third, Dr.
21 Becraft's findings from January 2004 are not necessarily called into
22 question by the later findings from December 2006 and May 2007 of Dr.
23 Salib and Dr. Loomis. Because Dr. Becraft's opinion supports
24 Plaintiff's claim that her mental impairment was severe, the ALJ
25 should have addressed it. On remand the ALJ must consider the opinion
26 and explain the weight that he gives it.

1 5. Dr. Estafan's Assessment

2 Plaintiff next argues that the ALJ provided insufficient reasons
3 for rejecting the January 23, 2008 "work capacity evaluation"
4 assessment of his treating psychiatrist, Dr. Maged Estafan. (Joint
5 Stip. at 21-23.) Here, the Court disagrees.

6 Dr. Estafan indicated on a check-the-box form that he submitted
7 to Plaintiff's counsel that she would have "extreme" limitations in
8 almost every functional area, including the ability to understand and
9 remember very short and simple instructions. (AR 811-12.) He also
10 indicated that her impairment would cause her to miss three or more
11 days of work per month. (AR 812.)

12 The ALJ rejected this opinion on the grounds that he could not
13 discern who had completed and signed the form and because there were
14 no treating or progress records to support it. (AR 17.) Although
15 Plaintiff correctly notes (and the Agency concedes) that it was signed
16 by Dr. Estafan, who treated Plaintiff at Riverside County Department
17 of Mental Health (AR 821), the ALJ was entitled to reject the opinion
18 on the basis that it was not supported by treatment notes. None of
19 the County's progress notes, or any other medical evidence in the
20 record, suggests that Plaintiff would have the extreme limitations
21 found by Dr. Estafan. Treating psychiatrist Dr. Morales noted in
22 October 2007 that Plaintiff was showing "significant improvement."
23 (AR 823.) Dr. Estafan's own notes from January 8 and February 1,
24 2008, are unremarkable. (AR 814, 816.) Because this was a specific
25 and legitimate reason for rejecting Dr. Estafan's functional
26 assessment and it is supported by substantial evidence, it will be
27 upheld. *See Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1195
28 (9th Cir. 2004).

1 6. The ALJ's Finding That Plaintiff's Mental Impairment
2 Was Not Severe

3 Plaintiff argues that, in light of the ALJ's failure to properly
4 consider the mental health record, he erred in concluding that her
5 mental impairment was not severe. (Joint Stip. at 23-25.) For the
6 following reasons, the Court concludes that the ALJ must reconsider
7 his finding regarding the severity of Plaintiff's mental impairment on
8 remand.

9 At step two of the sequential evaluation process, an ALJ is
10 tasked with identifying a claimant's "severe" impairments. 20 C.F.R.
11 §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). A severe impairment is one
12 that significantly limits an individual's physical or mental ability
13 to do basic work activities. *Smolen*, 80 F.3d at 1290; 20 C.F.R.
14 §§ 404.1521(a), 416.921(a). "Basic work activities" are "the
15 abilities and aptitudes necessary to do most jobs." 20 C.F.R.
16 §§ 404.1521(b), 416.921(b). For an impairment to be severe, it must
17 have lasted or be expected to last for a continuous period of at least
18 12 months. 20 C.F.R. §§ 404.1509, 416.909. The step-two inquiry is
19 intended to be a "de minimis screening device." *Smolen*, 80 F.3d at
20 1290 (citing *Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987)).

21 As set forth above, the ALJ erred in not considering Dr.
22 Becraft's opinion and in rejecting the Los Angeles County treating
23 psychiatrist's opinion for reasons that are not supported in the
24 record. On remand, the ALJ should address those opinions and
25 reconsider whether, in light of that analysis, Plaintiff has a severe
26 mental impairment.

1 C. Plaintiff's Remaining Claims

2 Plaintiff contends that the ALJ erred in failing to incorporate
3 all of her limitations in his hypothetical question to the vocational
4 expert and in determining that she could perform her past relevant
5 work. (Joint Stip. at 25-27, 28-31.) In light of the Court's ruling
6 on the other issues outlined above, the ALJ will necessarily be
7 required to reconsider these issues on remand as well.

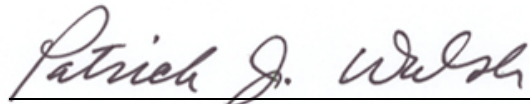
8 IV.

9 CONCLUSION

10 For these reasons, the Agency's decision is reversed and the case
11 is remanded for further proceedings consistent with this opinion.

12 IT IS SO ORDERED.

13 DATED: March 29, 2011

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16 PATRICK J. WALSH
17 UNITED STATES MAGISTRATE JUDGE
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