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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DEENA M. JONES,	)	Case No. ED CV 12-999-PJW
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	
	)	
CAROLYN W. COLVIN,	)	
ACTING COMMISSIONER OF THE	)	
SOCIAL SECURITY ADMINISTRATION,	)	
	)	
Defendant.	)	

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I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying her application for Disability Insurance benefits ("DIB"). She claims that the Administrative Law Judge ("ALJ") erred when he discounted the opinions of her treating and examining doctors and concluded that she and her husband were not credible. For the reasons discussed below, the Court finds that the ALJ erred and remands the case to the Agency for an award of benefits.

II. SUMMARY OF PROCEEDINGS

In November 2008, Plaintiff applied for DIB, claiming that she was disabled due to fibromyalgia, chronic fatigue syndrome, mitral valve prolapse, headaches, irritable bowel syndrome, hypothyroidism,

1 and memory problems. (Administrative Record ("AR") 20, 74, 132-35,  
2 151.) Her application was denied initially and on reconsideration.  
3 She then requested and was granted a hearing before an ALJ. (AR 73-  
4 83, 85, 104-09.) On June 30, 2010, Plaintiff appeared with counsel  
5 and testified at the hearing. (AR 36-66.) On August 23, 2010, the  
6 ALJ issued a decision, finding that she was not disabled. (AR 20-25.)  
7 Plaintiff appealed to the Appeals Council, which denied review. (AR  
8 1-3.) This appeal followed.

### 9 III. DISCUSSION

#### 10 A. The Treating and Examining Doctors' Opinions

11 Plaintiff contends that the ALJ erred when he rejected the  
12 opinions of her treating and examining doctors. For the following  
13 reasons, the Court agrees.

14 Generally speaking, a treating doctor's opinion is entitled to  
15 deference. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007); *see also*  
16 *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 600 (9th Cir.  
17 1999) (explaining that treating physician's opinion "is given  
18 deference because 'he is employed to cure and has a greater  
19 opportunity to know and observe the patient as an individual.'")  
20 (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987)).  
21 Thus, all things being equal, a treating doctor's opinion regarding a  
22 claimant's condition should be given controlling weight. *Orn*, 495  
23 F.3d at 631; *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988). That  
24 being said, however, an ALJ is not required to simply accept a  
25 treating doctor's opinion. Where, as here, the opinion is  
26 contradicted by another doctor's opinion, the ALJ is empowered to  
27 reject the treating doctor's opinion for specific and legitimate  
28 reasons supported by substantial evidence in the record. *See Thomas*

1 v. *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (quoting *Magallanes v.*  
2 *Bowen* 881 F.2d 747, 751 (9th Cir. 1989)); *Morgan*, 169 F.3d at 600.  
3 The opinions of examining doctors are also entitled to deference and,  
4 where contradicted by another doctor, may only be discounted for  
5 specific and legitimate reasons. *Lester v. Chater*, 81 F.3d 821, 830  
6 (9th Cir. 1995).

7 Plaintiff's treating endocrinologist, Dr. Stephen Damiani,  
8 diagnosed Plaintiff with fibromyalgia, chronic fatigue syndrome,  
9 Hashimoto's thyroiditis, peripheral neuropathy, and an autoimmune  
10 disease. (AR 655-62.) Plaintiff's treating infectious disease  
11 doctor, Dr. Ronald Kundargi, also diagnosed Plaintiff with  
12 fibromyalgia. (AR 642-47.) Both doctors believed that Plaintiff was  
13 too incapacitated to work due to her impairments. For example, they  
14 opined that she was unable to sit, stand, or, walk for more than one  
15 hour in an eight-hour day. (AR 645, 657.) Dr. Damiani believed that  
16 Plaintiff would miss more than three days of work per month; Dr.  
17 Kundargi thought she would miss at least two days per week. (AR 646,  
18 661.) A third treating physician, Dr. Arvind Salwan, diagnosed  
19 Plaintiff with chronic fatigue syndrome and opined that she "has  
20 bruises due to balance issues and falling" and must "be on restricted  
21 driving, [i.e.,] only local and very short trips." (AR 623.)

22 The ALJ rejected the opinions of all three doctors on the grounds  
23 that their assessments "are egregiously accommodative, indulgent, and  
24 exaggerated and would have one believe that [Plaintiff] is a  
25 functionless valetudinarian, which is simply not established by  
26 clinical and diagnostic evidence." (AR 23.) This is not a specific  
27 or a legitimate reason to reject the doctors' opinions. In the first  
28 place, it is far too general. See *Embrey*, 849 F.2d at 421 ("To say

1 that medical opinions are not supported by sufficient objective  
2 findings or are contrary to the preponderant conclusions mandated by  
3 the objective findings does not achieve the level of specificity our  
4 prior cases have required, even when the objective factors are listed  
5 seriatim."). General findings like these do not allow the parties or  
6 the Court to understand what the ALJ was basing his decision on and  
7 thus precludes meaningful review.

8       Second, the lack of objective medical evidence is not a  
9 legitimate reason for discounting the opinions of Plaintiff's treating  
10 doctors in this case because of the nature of her ailments.  
11 Fibromyalgia is a unique disease that "is diagnosed entirely on the  
12 basis of patients' reports of pain and other symptoms." *Benecke v.*  
13 *Barnhart*, 379 F.3d 587, 590 (9th Cir. 2004). As a result, the Ninth  
14 Circuit has held that an ALJ may not reject a treating doctor's  
15 fibromyalgia diagnosis merely because there is no objective evidence  
16 to support it. See *id.* at 594 ("The ALJ erred by effectively  
17 requiring objective evidence for a disease that eludes such  
18 measurement." (alteration and quotation marks omitted)). Similarly,  
19 chronic fatigue syndrome is defined as "'self-reported persistent or  
20 relapsing fatigue lasting six or more consecutive months,'" and is  
21 diagnosed by ruling out other possible illnesses. See *Reddick v.*  
22 *Chater*, 157 F.3d 715, 726 (9th Cir. 1998) (quoting Centers for Disease  
23 Control, *The Chronic Fatigue Syndrome: A Comprehensive Approach to its*  
24 *Definition and Study*, 121 *Annals of Internal Medicine* 954 (1994))  
25 (emphasis in original). Thus, the lack of clinical and diagnostic  
26 evidence supporting Plaintiff's diagnoses is not, by itself, a  
27 legitimate reason for rejecting the doctors' opinions.

1 Third, there is at least some objective evidence in the record  
2 supporting Dr. Damiani's and Dr. Kundargi's fibromyalgia diagnosis and  
3 supporting Dr. Damiani's and Dr. Salwan's chronic fatigue syndrome  
4 diagnosis. Dr. Kundargi noted in a Fibromyalgia Questionnaire that he  
5 filled out in connection with this case that "[a]ll pain trigger  
6 locations are extreme." (AR 643-44, 646.) Based on his findings, Dr.  
7 Kundargi concluded that Plaintiff met the American Rheumatological  
8 criteria for fibromyalgia. (AR 642.) For his part, Dr. Damiani  
9 stated in a Multiple Impairment Questionnaire that Plaintiff had pain  
10 all over her body, including her neck, shoulders, arms, hands, legs,  
11 and feet. (AR 655-56.) Further, with respect to chronic fatigue  
12 syndrome, Plaintiff manifested other common symptoms in addition to  
13 fatigue, such as headaches, low-grade fevers, and memory problems.  
14 (AR 297, 441, 648-53, 656.)

15 Dr. Damiani, who followed Plaintiff's progress for more than  
16 three-and-a-half years, referred her to various specialists and  
17 conducted extensive lab testing to rule out other possible illnesses.  
18 (AR 295-98, 304-24, 330-32, 550-51, 556, 559, 561-64, 568, 572, 576-  
19 78; see AR 587-88 (examining physician's note that other possible  
20 diagnoses had been considered and ruled out for Plaintiff's  
21 fibromyalgia and chronic fatigue syndrome).) The ALJ erred in not  
22 addressing Dr. Damiani's treatment. See *Reddick*, 157 F.3d at 726 (ALJ  
23 erred in rejecting treating doctor's diagnosis of chronic fatigue  
24 syndrome where the doctor "followed [the claimant's] progress for  
25 three and a half years, referred her to several specialists and  
26 conducted extensive lab testing to rule out other possible  
27 illnesses").

1 Finally, in addition to Dr. Damiani's and Dr. Kundargi's  
2 fibromyalgia diagnoses, examining physician Ratiner also diagnosed  
3 Plaintiff with fibromyalgia. (AR 584-88.) Dr. Ratiner based his  
4 opinion on a review of Plaintiff's records and on his own physical  
5 examination, which revealed "greater than 12 fibromyalgia tender  
6 points" in her neck and lower back. (AR 586.)

7 For these reasons, the Court rejects the ALJ's finding that the  
8 opinions of Dr. Damiani, Dr. Kundargi, and Dr. Salwan were not  
9 entitled to deference because they were not supported by the  
10 evidence.<sup>1</sup>

11 The Court also finds that the ALJ erred in rejecting Dr.  
12 Ratiner's opinion. Dr. Ratiner diagnosed Plaintiff with fibromyalgia,  
13 chronic fatigue syndrome, Hashimoto's thyroiditis, and peripheral  
14 neuropathy, and opined that, as a result of her impairments, she  
15 "[would] need frequent breaks from work and [would] likely have a lot  
16 of missed work days due to her symptoms . . . ." (AR 587-88.) The  
17 ALJ rejected this opinion on the grounds that it "was purchased by  
18 [Plaintiff's] representative to support the current litigation" and he  
19 was not a treating physician. (AR 23.)

20 An ALJ cannot reject an examining doctor's opinion on the basis  
21 that he was not a treating doctor. An examining doctor, by  
22 definition, is a doctor who does not treat the claimant. See 20  
23 C.F.R. § 404.1502. Still, an ALJ *must* consider his or her opinion.  
24 *Lester*, 81 F.3d at 830; 20 C.F.R. § 404.1527. To the extent that the

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26 <sup>1</sup> As to Dr. Damiani's opinion regarding Plaintiff's other  
27 impairments, there is clinical and diagnostic evidence supporting  
28 these diagnoses as well, including Plaintiff's treating neurologist's  
finding of peripheral neuropathy and ultrasound results suggesting  
Hashimoto's thyroiditis. (AR 548, 558, 592-99.)

1 ALJ rejected Dr. Ratiner's opinion because he believed that it was  
2 "purchased" by Plaintiff's attorney, that was also improper. *Batson*  
3 *v. Comm'r of Social Sec. Admin.*, 359 F.3d 1190, 1196 n.5 (9th Cir.  
4 2004) (quoting *Lester*, 81 F.3d at 830). The fact that a claimant has  
5 paid a doctor for his services is not a valid reason for discounting  
6 that doctor's opinion. As is clear in these types of cases, all of  
7 the doctors are paid by one side or the other. Thus, excluding some  
8 opinions on the basis of payment makes no sense.

9 Finally, the Court notes that the ALJ's decision was not based on  
10 any of the current medical opinions in the record. Even the Agency  
11 doctors who reviewed the records determined that Plaintiff was  
12 restricted to sedentary work. Unhappy with those findings, the ALJ  
13 simply rejected them and relied on earlier findings by Agency doctors  
14 to support what appears to be his preordained conclusion that  
15 Plaintiff was capable of performing light work and, therefore, was not  
16 disabled. (AR 24.)

17 B. The Credibility Determination

18 Plaintiff argues that the ALJ erred in concluding that she was  
19 not credible. For the following reasons, the Court finds that the ALJ  
20 erred in concluding that Plaintiff was not credible.

21 ALJs are tasked with judging the credibility of witnesses. In  
22 making these determinations, they may employ ordinary credibility  
23 evaluation techniques. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir.  
24 1996). Where a claimant has produced objective medical evidence of an  
25 impairment which could reasonably be expected to produce the symptoms  
26 alleged and there is no evidence of malingering, however, an ALJ can  
27 only reject the claimant's testimony for specific, clear, and  
28

1 convincing reasons that are supported by substantial evidence in the  
2 record. *Id.* at 1283-84; *Thomas*, 278 F.3d at 959.

3 Plaintiff testified at the hearing that she stopped working in  
4 2006 because her feet were dragging and she had weakness, dizziness,  
5 muscle twitching, and pain all over her body. (AR 40.) She claimed  
6 that she had intermittent pain in her neck and constant pain in her  
7 shoulders and lower back. She also complained about spasms and pain  
8 in her lower back and legs, dizziness, an inability to grip and grasp  
9 things with her hands, shortness of breath and poor memory. (AR 42,  
10 44-45, 49-51, 53-54.) Plaintiff testified that she could only stand  
11 and walk for five to ten minutes at a time, sit for fifteen minutes at  
12 a time, and lift less than a gallon of milk. (AR 47, 56-58.) She  
13 also reported that, as a result of her limitations, she could not cook  
14 or perform other "normal household chores"; could not button her  
15 shirts; and could not sit at the computer for more than ten minutes at  
16 a time. (AR 42, 46-47.) According to Plaintiff, she was forced to  
17 sit with her feet up and a heating pad on her lower back for four  
18 hours a day. (AR 43.) In a written statement submitted with her  
19 disability application, Plaintiff claimed that she could not sit,  
20 squat, kneel, bend, or hold onto anything and that she had to take  
21 breaks between the time she finished showering and the time she began  
22 to dry her hair or get dressed. (AR 161-63.)

23 The ALJ concluded that Plaintiff's "statements concerning the  
24 intensity, persistence and limiting effects of these symptoms are  
25 credible only to the extent that they are consistent with [the ALJ's  
26 residual functional capacity findings for Plaintiff]." (AR 24.) The  
27 ALJ did not give any reasons for this conclusion, though he noted in  
28



1 his discussion of Plaintiff's testimony that she renewed her  
2 California driver's license in November 2007. (AR 24.)

3 Insofar as the ALJ discounted Plaintiff's testimony solely  
4 because she renewed her California driver's license, this is not a  
5 clear and convincing reason. It is not clear to the Court what  
6 connection renewing a driver's license has with Plaintiff's ability to  
7 work. And it is not convincing because, as Plaintiff explained, her  
8 license was automatically renewed by DMV and sent to her in the mail.  
9 (AR 60-61.)

10 Thus, the ALJ has not provided any valid reasons for discounting  
11 Plaintiff's testimony. As such, this finding is reversed.<sup>2</sup>

12 C. Reversal for an Award of Benefits Is Warranted

13 Because the ALJ failed to provide any valid reasons for rejecting  
14 Plaintiff's testimony and the doctors' opinions, the Court credits  
15 them as true. See *Benecke*, 379 F.3d at 594. Accepting Plaintiff's  
16 testimony of debilitating pain which limits her from performing even  
17 minimal tasks and combining that with the doctors' opinions that her  
18 condition would require her to miss multiple (three to eight) days of  
19 work each month, she is clearly disabled. As such, there is nothing  
20 left for the Agency to do except calculate the amount of benefits owed  
21 to Plaintiff and award her those benefits. See *Benecke*, 379 F.3d at  
22 595; *Nguyen v. Colvin*, 2013 WL 4505253, at \*16 (N.D. Cal. Aug. 13,  
23 2013) (finding claimant disabled and remanding for award of benefits  
24 where ALJ improperly rejected treating doctor's opinion that claimant  
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26 <sup>2</sup> Plaintiff also complains that the ALJ failed to provide  
27 legitimate reasons for discounting her husband's testimony, which  
28 essentially mirrored hers. The Court need not and does not address  
this issue because it is not necessary to resolve the case.

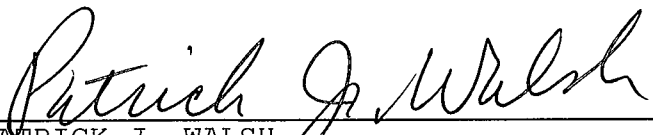
1 would miss more than four days of work per month); *Cash v. Astrue*,  
2 2010 WL 2888973, at \*5 (C.D. Cal. July 20, 2010) (finding, despite  
3 lack of vocational expert testimony on the issue, treating doctor's  
4 assessment that claimant would be absent from work three or more days  
5 per month "indicate[d] that a disability finding would be required,"  
6 and remanding for benefits); see also *Brewes v. Comm'r of Social Sec.*  
7 *Admin.*, 682 F.3d 1157, 1165 (9th Cir. 2012) (finding claimant disabled  
8 and remand for award of benefits proper where treating doctors opined  
9 she would miss multiple days of work per month and vocational expert  
10 testified such a person was not employable); *Alcala v. Colvin*, 2013 WL  
11 1620352, at \*9 (C.D. Cal. Apr. 15, 2013) (remanding for award of  
12 benefits where claimant's treating doctors testified she would miss  
13 more than three days of work per month and vocational expert testified  
14 such a limitation would preclude past relevant work).

15 IV. CONCLUSION

16 For the reasons set forth above, the Agency's decision is  
17 reversed and the case is remanded for an award of benefits.

18 IT IS SO ORDERED.

19 DATED: October 1, 2013.

20  
21   
22 PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE