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

JIMMY WOOD,	)	NO. ED CV 16-534-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
CAROLYN W. COLVIN, Acting	)	<b>AND ORDER OF REMAND</b>
Commissioner of Social Security,	)	
	)	
Defendant.	)	
	)	

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Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS  
HEREBY ORDERED that Plaintiff's and Defendant's motions for summary  
judgment are denied, and this matter is remanded for further  
administrative action consistent with this Opinion.

**PROCEEDINGS**

Plaintiff filed a Complaint on March 23, 2016, seeking review of  
the Commissioner's denial of benefits. The parties filed a consent to  
proceed before a United States Magistrate Judge on April 20, 2016.  
///

1 Plaintiff filed a motion for summary judgment on August 16, 2016.  
2 Defendant filed a motion for summary judgment on September 15, 2016.  
3 The Court has taken both motions under submission without oral  
4 argument. See L.R. 7-15; "Order," filed March 29, 2016.  
5

#### 6 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

7

8 Plaintiff asserts disability since September 14, 2011, based on a  
9 combination of alleged mental and physical impairments (Administrative  
10 Record ("A.R.") 34-50, 201-03). Plaintiff's long-time treating  
11 psychiatrist, Dr. Thomas B. Jackson, has opined that severe mental  
12 impairments disable Plaintiff from all employment (A.R. 423-27, 474-  
13 78).  
14

15 An Administrative Law Judge ("ALJ") found Plaintiff not disabled  
16 (A.R. 14-26). Although the ALJ agreed that Plaintiff has severe  
17 impairments, including severe mental impairments, the ALJ found  
18 Plaintiff retains the residual functional capacity for a limited range  
19 of light work (id.). The ALJ gave "little weight" to the opinions of  
20 Dr. Jackson (A.R. 23). The Appeals Council denied review (A.R. 1-4).  
21

#### 22 **STANDARD OF REVIEW**

23

24 Under 42 U.S.C. section 405(g), this Court reviews the  
25 Administration's decision to determine if: (1) the Administration's  
26 findings are supported by substantial evidence; and (2) the  
27 Administration used correct legal standards. See Carmickle v.  
28 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,

1 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner,  
2 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such  
3 relevant evidence as a reasonable mind might accept as adequate to  
4 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
5 (1971) (citation and quotations omitted); see also Widmark v.  
6 Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

7  
8 If the evidence can support either outcome, the court may  
9 not substitute its judgment for that of the ALJ. But the  
10 Commissioner's decision cannot be affirmed simply by  
11 isolating a specific quantum of supporting evidence.  
12 Rather, a court must consider the record as a whole,  
13 weighing both evidence that supports and evidence that  
14 detracts from the [administrative] conclusion.

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16 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and  
17 quotations omitted).

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19 **DISCUSSION**

20  
21 **I. The ALJ Erred in the Evaluation of Dr. Jackson's Opinions.**

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23 The ALJ must "consider" and "evaluate" every medical opinion of  
24 record. 20 C.F.R. § 404.1527(b) and (c); see Social Security Ruling

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1 ("SSR") 96-8p.<sup>1</sup> In this consideration and evaluation, an ALJ "cannot  
2 reject [medical] evidence for no reason or the wrong reason." Cotter  
3 v. Harris, 642 F.2d 700, 706-07 (3d Cir. 1981); see Day v. Weinberger,  
4 522 F.2d 1154, 1156 (9th Cir. 1975) (ALJ may not make his or her own  
5 lay medical assessment).

6  
7 Under the law of the Ninth Circuit, the opinions of treating  
8 physicians command particular respect. "As a general rule, more  
9 weight should be given to the opinion of the treating source than to  
10 the opinion of doctors who do not treat the claimant. . . ." Lester  
11 v. Chater, 81 F.3d 821, 830 (9th Cir. 1995) (citations omitted). A  
12 treating physician's conclusions "must be given substantial weight."  
13 Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988); see Rodriguez v.  
14 Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the ALJ must give  
15 sufficient weight to the subjective aspects of a doctor's opinion.  
16 . . . This is especially true when the opinion is that of a treating  
17 physician") (citation omitted); see also Orn v. Astrue, 495 F.3d 625,  
18 631-33 (9th Cir. 2007) (discussing deference owed to treating  
19 physicians' opinions). Even where the treating physician's opinions  
20 are contradicted,<sup>2</sup> "if the ALJ wishes to disregard the opinion[s] of  
21 the treating physician he . . . must make findings setting forth  
22 specific, legitimate reasons for doing so that are based on

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24 <sup>1</sup> Social Security rulings are binding on the  
25 Administration. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1  
26 (9th Cir. 1990).

27 <sup>2</sup> Rejection of an uncontradicted opinion of a treating  
28 physician requires a statement of "clear and convincing" reasons.  
Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Gallant v.  
Heckler, 753 F.2d 1450, 1454 (9th Cir. 1984).

1 substantial evidence in the record." Winans v. Bowen, 853 F.2d 643,  
2 647 (9th Cir. 1987) (citation, quotations and brackets omitted); see  
3 Rodriguez v. Bowen, 876 F.2d at 762 ("The ALJ may disregard the  
4 treating physician's opinion, but only by setting forth specific,  
5 legitimate reasons for doing so, and this decision must itself be  
6 based on substantial evidence") (citation and quotations omitted). As  
7 discussed below, the ALJ erred by relying on illegitimate reasoning to  
8 reject the opinions of Dr. Jackson.

9  
10 First, the ALJ stated, "Although [Dr. Jackson's] treatment notes  
11 indicate the claimant's general disposition was sad, anxious, and  
12 depression [sic], with one account of disorganization in May of 2012  
13 and one reported hyperactivity in January of 2011, his mental status  
14 exam results were otherwise normal" (A.R. 22). The ALJ thereby  
15 mischaracterized the medical record; Plaintiff's "mental status exam  
16 results" were not "otherwise normal" (A.R. 442 (thought processes not  
17 "normal" but rather "circumstantial"), 445 (thought content not  
18 "normal" but rather included "ideas of reference"<sup>3</sup>), 447 (mental  
19 status exam revealed "olfactory hallucinations"), 525 (affect  
20 "restricted," rather than "appropriate")). The ALJ's characterization  
21 of Dr. Jackson's treatment notes also failed to take into account  
22 notations therein of other abnormalities tending to support Dr.  
23 Jackson's opinions (A.R. 436 (anger), 442 (mood swings), 444 (often  
24 angry and feels people are talking about him), 531 (anger,

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27 <sup>3</sup> The phrase "ideas of reference" denotes "an illogical  
28 tendency to relate external events to one's self." See Johnson  
v. United States, 409 F. Supp. 1283, 1286 n.4 (M.D. Fla. 1976),  
rev'd on other grounds, 576 F.2d 606 (5th Cir. 1978).

1 irritability), 532 ("very reactive to stress - concentration very poor  
2 . . . angers easily")).<sup>4</sup> An ALJ's material mischaracterization of the  
3 record can warrant remand. See, e.g., Regennitter v. Commissioner of  
4 Social Sec. Admin., 166 F.3d 1294, 1297 (9th Cir. 1999). The  
5 mischaracterizations in the present case are potentially material.

6  
7 Second, to reject Dr. Jackson's opinions, the ALJ purported to  
8 rely on the non-examining state agency physicians' "mental assessment  
9 of the claimant's alleged mental impairments" (A.R. 23). As  
10 previously indicated, the opinion of an examining physician generally  
11 should receive more weight than the opinion of a non-examining  
12 physician. See Andrews v. Shalala, 53 F.3d 1035, 1040-41 (9th Cir.  
13 1995). In fact, "[t]he opinion of a nonexamining physician cannot by  
14 itself constitute substantial evidence that justifies the rejection of  
15 the opinion of . . . an examining physician." Lester v. Chater, 81  
16 F.3d at 831; see also Orn v. Astrue, 495 F.3d at 632 ("When [a  
17 nontreating] physician relies on the same clinical findings as a  
18 treating physician, but differs only in his or her conclusions, the  
19 conclusions of the [nontreating] physician are not 'substantial  
20 evidence.'"); Pitzer v. Sullivan, 908 F.2d 502, 506 n.4 (9th Cir.  
21 1990) (nonexamining physician's conclusions, with nothing more, not  
22 substantial evidence in light of "the conflicting observations,  
23 opinions, and conclusions" of examining physician). Moreover, the  
24 contradiction of a treating physician's opinion by another physician's

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27 <sup>4</sup> The Court observes that the record of Dr. Jackson's  
28 progress notes appears to be incomplete. Each of pages 531  
through 533 of the Administrative Record contains only a first  
page of a presumably multi-page progress note.

1 opinion triggers rather than satisfies the requirement of stating  
2 "specific, legitimate reasons." See, e.g., Valentine v. Commissioner,  
3 574 F.3d 685, 692 (9th Cir. 2007); Orn v. Astrue, 495 F.3d at 631-33;  
4 Lester v. Chater, 81 F.3d at 830-31.

5  
6 Third, the ALJ stated that the fact "Dr. Jackson only saw the  
7 claimant every three months . . . suggests the claimant's symptoms  
8 were not disabling" (A.R. 23). The ALJ appears to have reasoned that  
9 Dr. Jackson must not have believed in the truth of his own opinions  
10 because, had he so believed, he would have seen Plaintiff more  
11 frequently. An ALJ "may not assume that doctors routinely lie in  
12 order to help their patients collect disability benefits." Lester v.  
13 Chater, 81 F.3d at 832 (citations and quotations omitted). Of course,  
14 an ALJ may conclude, based on substantial evidence, that a particular  
15 doctor is lying about the severity of a particular patient's  
16 impairments. However, the ALJ failed to identify any substantial  
17 evidence supporting such a conclusion in the present case, and no such  
18 evidence appears from the record. As previously indicated, the  
19 contradiction of Dr. Jackson's opinions by non-examining physicians  
20 cannot constitute substantial evidence. The ALJ's lay opinion  
21 regarding medical matters also cannot constitute substantial evidence.  
22 See Tackett v. Apfel, 180 F.3d at 1102-03; Balsamo v. Chater, 142 F.3d  
23 75, 81 (2d Cir. 1998); Rohan v. Chater, 98 F.3d 966, 970 (7th Cir.

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1 1996); Day v. Weinberger, 522 F.2d at 1156.<sup>5</sup>

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3 Fourth, the ALJ stated that, "contrary to Dr. Jackson's assertion  
4 that the claimant has been unable to work since 1995, the claimant's  
5 earnings suggest otherwise" (A.R. 23). Dr. Jackson acknowledged  
6 Plaintiff previously worked as an in-home caregiver for Plaintiff's  
7 mother (A.R. 424 ("He has been unable to work since 1995 except for  
8 period of time when he cared for his elderly mother"); see also A.R.  
9 472). Dr. Jackson evidently believed that this in-home work, which  
10 occurred years prior to Plaintiff's alleged disability onset, did not  
11 detract from Dr. Jackson's opinion that Plaintiff's alleged inability  
12 to function in society would prevent him from performing any outside  
13 employment.<sup>6</sup> If the ALJ thought that Dr. Jackson should have  
14 explained more fully this alleged discrepancy, or the bases for the  
15 limitations Dr. Jackson found to exist, the ALJ should have developed  
16 the record further. See generally Brown v. Heckler, 713 F.2d 441, 443  
17 (9th Cir. 1983) ("[T]he ALJ has a special duty to fully and fairly  
18 develop the record to assure the claimant's interests are considered.

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19  
20 <sup>5</sup> To the extent Defendant argues that the allegedly  
21 "conservative" course of Dr. Jackson's treatment undermines the  
22 opinions regarding disability, the record contains no medical  
23 evidence either supporting such an inference or identifying the  
24 medical benefits potentially available from more frequent or  
25 aggressive treatment of Plaintiff's severe mental impairments.  
26 The Administration cannot properly infer the nonexistence of the  
27 reported deficits from a failure to obtain ineffective or  
28 nonexistent treatment. See Lapeirre-Gutt v. Astrue, 382 Fed.  
App'x 662, 664 (9th Cir. 2010) ("A claimant cannot be discredited  
for failing to pursue non-conservative treatment options where  
none exist.").

<sup>6</sup> For different reasons, the ALJ found Plaintiff could  
not perform his past work as an in-home caregiver (A.R. 24).



1 This duty exists even when the claimant is represented by counsel.")  
2 (internal citation omitted); see also Smolen v. Chater, 80 F.3d at  
3 1288 ("If the ALJ thought he needed to know the basis of Dr.  
4 Hoeflich's opinions in order to evaluate them, he had a duty to  
5 conduct an appropriate inquiry, for example, by subpoenaing the  
6 physicians or submitting further questions to them. He could also  
7 have continued the hearing to augment the record.") (citations  
8 omitted).<sup>7</sup>

9  
10 The Ninth Circuit's decision in Valentine v. Commissioner, 574  
11 F.3d 685 (9th Cir. 2009) ("Valentine"), cited by Defendant, is  
12 distinguishable. In Valentine, the treating physician "repeatedly  
13 reported [Valentine] was unemployable while acknowledging he was  
14 continuing to work full-time," and the physician's own treatment  
15 progress reports showed Valentine's improved functioning at work. Id.  
16 at 692-93. In the present case, Plaintiff's prior work occurred many  
17 years ago, long prior to when Dr. Jackson rendered his opinions (and  
18 even prior to when Dr. Jackson first examined Plaintiff) (A.R. 427,  
19 478). Moreover, Plaintiff's prior work involved a peculiar  
20 circumstance concerning his sick mother, and the ALJ conceded that  
21 Plaintiff had presented "new and material evidence" "related to the  
22

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23 <sup>7</sup> Plaintiff also faults the ALJ for failing to mention an  
24 alleged opinion from Dr. Gill, another of Plaintiff's treating  
25 physicians. It does not appear that the ALJ erred in this  
26 regard. In the context of Dr. Gill's August 15, 2012 "Follow-  
27 up," when Dr. Gill stated, "He is disabled due to his multiple  
28 medical problems," it appears Dr. Gill was merely reciting  
Plaintiff's own allegations. In neither the "Impression" section  
nor the "Recommendations" section of the "Follow-up" did Dr. Gill  
purport to address Plaintiff's ability (or inability) to work  
(A.R. 314).

1 existence of a medically determinable impairment" apparently emerging  
2 after his mother's death (A.R. 14-15).

3  
4 **II. Remand for Further Administrative Proceedings is Appropriate.**

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6 Remand is appropriate because the circumstances of this case  
7 suggest that further administrative review could remedy the ALJ's  
8 errors. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2010); see also  
9 INS v. Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an  
10 administrative determination, the proper course is remand for  
11 additional agency investigation or explanation, except in rare  
12 circumstances); Dominquez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)  
13 ("Unless the district court concludes that further administrative  
14 proceedings would serve no useful purpose, it may not remand with a  
15 direction to provide benefits"); Treichler v. Commissioner, 775 F.3d  
16 1090, 1101 n.5 (9th Cir. 2014) (remand for further administrative  
17 proceedings is the proper remedy "in all but the rarest cases");  
18 Garrison v. Colvin, 759 F.3d 995, 1020 (9th Cir. 2014) (court will  
19 credit-as-true medical opinion evidence only where, inter alia, "the  
20 record has been fully developed and further administrative proceedings  
21 would serve no useful purpose"); Harman v. Apfel, 211 F.3d 1172, 1180-  
22 81 (9th Cir.), cert. denied, 531 U.S. 1038 (2000) (remand for further  
23 proceedings rather than for the immediate payment of benefits is  
24 appropriate where there are "sufficient unanswered questions in the  
25 record"). There remain significant unanswered questions in the  
26 present record. See Marsh v. Colvin, 792 F.3d 1170, 1173 (9th Cir.

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