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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 24, 2018

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

ROBIN O. O/B/O KMA, A MINOR
CHILD,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:18-cv-03032-MKD

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING IN
PART AND DENYING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 15, 19

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 19. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, Plaintiff's Motion, ECF No. 15, is granted and Defendant's Motion, ECF No. 19, is granted in part and denied in part.

1 **JURISDICTION**

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

3 **STANDARD OF REVIEW**

4 A district court’s review of a final decision of the Commissioner of Social
5 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
6 limited; the Commissioner’s decision will be disturbed “only if it is not supported
7 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
8 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a
9 reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159
10 (quotation and citation omitted). Stated differently, substantial evidence equates to
11 “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and
12 citation omitted). In determining whether the standard has been satisfied, a
13 reviewing court must consider the entire record as a whole rather than searching
14 for supporting evidence in isolation. *Id.*

15 In reviewing a denial of benefits, a district court may not substitute its
16 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
17 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
18 rational interpretation, [the court] must uphold the ALJ’s findings if they are
19 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
20 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an

1 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
2 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
3 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
4 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
5 *Sanders*, 556 U.S. 396, 409-10 (2009).

6 **THREE-STEP PROCESS FOR CHILDHOOD DISABILITY**

7 To qualify for Title XVI supplement security income benefits, a child under
8 the age of eighteen must have “a medically determinable physical or mental
9 impairment, which results in marked and severe functional limitations, and which
10 can be expected to result in death or which has lasted or can be expected to last for
11 a continuous period of not less than 12 months.” 42 U.S.C. § 1382c(a)(3)(C)(i).

12 The regulations provide a three-step process to determine whether a claimant
13 satisfies the above criteria. 20 C.F.R. § 416.924(a). First, the ALJ must determine
14 whether the child is engaged in substantial gainful activity. 20 C.F.R. §
15 416.924(b). Second, the ALJ considers whether the child has a “medically
16 determinable impairment that is severe,” which is defined as an impairment that
17 causes “more than minimal functional limitations.” 20 C.F.R. § 416.924(c).

18 Finally, if the ALJ finds a severe impairment, the ALJ must then consider whether
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20

1 the impairment “medically equals” or “functionally equals” a disability listed in the
2 “Listing of Impairments” (listings). 20 C.F.R. § 416.924(c)-(d).

3 If the ALJ finds that the child’s impairment or combination of impairments
4 does not meet or medically equal a listing, the ALJ must determine whether the
5 impairment or combination of impairments functionally equals a listing. 20 C.F.R.
6 § 416.926a(a) (2011).¹ The ALJ’s functional equivalence assessment requires the
7 ALJ to evaluate the child’s functioning in six “domains.” These six domains,
8 which are designed “to capture all of what a child can or cannot do,” are as
9 follows:

- 10 (1) Acquiring and using information:
- 11 (2) Attending and completing tasks;
- 12 (3) Interacting and relating with others;
- 13 (4) Moving about and manipulating objects;
- 14 (5) Caring for self; and
- 15 (6) Health and physical well-being.

16
17 ¹ As of March 27, 2017, 20 C.F.R. § 416.926a(a) was amended. The ALJ rendered
18 his decision on October 20, 2016, thus, the Court applies the version effective June
19 13, 2011.

1 20 C.F.R. § 416.926a(b)(1)(i)-(vi) (2011). A child’s impairment will be deemed to
2 functionally equal a listed impairment if the child’s condition results in a “marked”
3 limitations in two domains, or an “extreme” limitation in one domain. 20 C.F.R. §
4 416.926a(a) (2011). An impairment is a “marked limitation” if it “interferes
5 seriously with [a person’s] ability to independently initiate, sustain, or complete
6 activities.” 20 C.F.R. § 416.926a(e)(2)(i) (2011). By contrast, an “extreme
7 limitation” is defined as a limitation that “interferes very seriously with [a
8 person’s] ability to independently initiate, sustain, or complete activities.” 20
9 C.F.R. § 416.926a(e)(3)(i) (2011).

10 **ALJ’S FINDINGS**

11 On October 1, 2013, Plaintiff filed an application on behalf of her minor
12 custodial grandchild’s behalf for supplemental security income (SSI) under Title
13 XVI of the Social Security Act alleging disability as of October 22, 2003.² Tr.
14 261-66. The remainder of this opinion will refer to the minor seeking benefits as
15 the Plaintiff. The application was denied initially, Tr. 165-71, and upon
16 reconsideration. Tr. 172-78. Plaintiff and her grandmother appeared for hearings

17
18 ² Plaintiff previously filed for SSI on February 1, 2012 alleging an onset date of
19 October 22, 2003. This application was denied at the initial level on June 12,
20 2012. Tr. 129. The ALJ did not reopen the prior claim. Tr. 18.

1 before an administrative law judge (ALJ) on July 14, 2015 and July 29, 2016. Tr.
2 41-128. On October 20, 2016, the ALJ denied Plaintiff's claims. Tr. 15-40.

3 The ALJ noted that Plaintiff was a school-age child on the date her
4 application was filed and an "adolescent" at the time of the hearing. Tr. 21. At
5 step one, the ALJ found Plaintiff has not engaged in substantial gainful activity
6 since October 1, 2013. Tr. 21. At step two, the ALJ found that Plaintiff has the
7 following severe impairments: attention deficit hyperactivity disorder (ADHD),
8 inattentive type, versus attention deficit disorder (ADD) versus learning disorder;
9 depression; anxiety; headaches; allergic rhinitis; and exercise induced
10 bronchospasm. Tr. 21. At step three, the ALJ found that Plaintiff does not have an
11 impairment or combination of impairments that meets or medically equals the
12 severity of a listed impairment. Tr. 21. With regard to functional equivalence, the
13 ALJ concluded that Plaintiff does not have an "extreme" limitation in any domain
14 of functioning or a "marked" limitation in two domains. Tr. 26-33. As a result,
15 the ALJ concluded that Plaintiff has not been disabled, as defined in the Social
16 Security Act, since October 1, 2013, the date the application was filed. Tr. 33.

17 On December 29, 2017, the Appeals Counsel denied review, Tr. 1-6, making
18 the ALJ's decision the Commissioner's final decision for purposes of judicial
19 review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying
3 her supplemental security income benefits under Title XVI of the Social Security
4 Act. ECF No. 15. Plaintiff raises the following issues for this Court’s review:

- 5 1. Whether the ALJ properly weighed the medical opinion evidence;
6 2. Whether the ALJ properly evaluated the lay testimony;
7 3. Whether the ALJ properly determined Plaintiff’s impairments did not meet
8 the listing requirements; and
9 4. Whether the ALJ properly determined Plaintiff’s impairments did not
10 functionally equal a listing.

11 ECF No. 15 at 6-21.

12 **DISCUSSION**

13 **A. Conceded Errors**

14 Plaintiff contends the ALJ improperly weighed the medical and lay witness
15 evidence in analyzing whether Plaintiff’s impairments met or functionally equaled
16 a listing at step three. ECF No. 15. Defendant concedes the ALJ committed
17 reversible errors undermining the ALJ’s Step Three findings. ECF No. 19 at 3-7.
18 First, Defendant concedes the ALJ erred in weighing the testimony of the testifying
19 medical expert, Tracy Gordy, M.D. ECF No. 19 at 3-6. Dr. Gordy testified that
20

1 Plaintiff satisfied listing 112.02,³ then referred to as the category for organic
2 mental disorders.⁴ Tr. 91, 100, 105, 107. Dr. Gordy testified Plaintiff has short-

3 _____
4 ³ The SSI childhood listings, including 112.02, were substantially revised in 2017,
5 after the ALJ's decision but before the Appeals Council's decision which stated it
6 expressly applied the "regulations and rulings in effect as of the date we took this
7 action." Tr. 1. Plaintiff applies the version in effect at the time of the ALJ's
8 decision. ECF No. 15 at 15. The Federal Register reads that "[w]e expect that
9 Federal courts will review our *final decisions* using the rules that were in effect at
10 the time we issued the decisions." See 81 FR 66138-01, 2016 WL 5341732, *n.1
11 (Sept. 26, 2016) (emphasis added). Neither party has raised the change in the
12 listing requirements as an issue impacting the Court's decision herein.

13 ⁴ At the time of the ALJ's decision, listing 112.02 required a showing of at least
14 one of the "paragraph A criteria" and at least two of the "paragraph B criteria." 20
15 C.F.R. Pt. 404, Subpt. P, App. 1 §§ 112.02(A), (B)(2) (2016). Paragraph A
16 required medically documented persistence of: (1) developmental arrest, delay or
17 regression; (2) disorientation to time and place; (3) memory impairment, either
18 short term or long term; (4) perceptual or thinking disturbance; (5) disturbance in
19 personality; (6) disturbance in mood; (7) emotional lability (e.g. sudden crying);
20 (8) impairment of impulse control; (9) impairment of cognitive function; or (10)

1 term memory difficulties, disturbance in personality, disturbance in mood,
2 emotional lability, poor impulse control, and disturbance of concentration and
3 attention. Tr. 107. Dr. Gordy also testified Plaintiff's impairment functionally
4 equaled the listing based upon marked impairment in three functional domains: (1)
5 acquiring and using information; (2) attending and completing tasks; and (3)
6 interacting and relating with others. Tr. 110-12. Defendant concedes the ALJ
7 accorded these opinions little weight without adequate explanation. ECF No. 19 at
8 3-5; Tr. 26.

9 Defendant also concedes the ALJ erred in failing to discuss all of the lay
10 witness evidence, including the Teacher Questionnaire from Plaintiff's second
11 grade teacher, Charis Weber, who opined on April 6, 2012 that Plaintiff was below
12 grade level in reading, makes "poor choices" socially, and had up to obvious
13 functional problems in the domains of acquiring and using information, attending
14 _____
15 disturbance of concentration, attention, or judgment. *Id.* § 112.02(A). Paragraph B
16 required a showing of: (a) marked impairment in age-appropriate
17 cognitive/communicative function; (b) marked impairment in age-appropriate
18 social functioning; (c) marked impairment in age-appropriate personal functioning;
19 or (d) marked difficulties in maintaining concentration, persistence, or pace. *Id.* §
20 112.02(B)(2).

1 and completing tasks, and interacting and relating with others. ECF No. 19 at 6;
2 *see* Tr. 291-98. In addition, Defendant concedes the ALJ did not discuss the
3 statement of Plaintiff’s guardian, Joe Ozuna, pertaining to Plaintiff’s activities and
4 social limitations. ECF No. 19 at 4, 6; *see* Tr. 407-08. Though Defendant’s
5 Motion does not address the evidence, Plaintiff also notes that the ALJ did not
6 discuss the letter of Plaintiff’s peer regarding Plaintiff’s self-harm. ECF No. 15 at
7 15 (citing Tr. 411).

8 Plaintiff’s Motion also contends the ALJ erroneously accorded little weight
9 to the January 2014 Teacher Questionnaire of Emily Sutliff (Plaintiff’s fourth
10 grade teacher) and the witness statement of Plaintiff’s grandmother, Robin Ozuna.
11 ECF No. 15 at 5-14. Ms. Sutliff opined Plaintiff was below grade level in math
12 and reading and had some “serious” and “very serious” problems in acquiring and
13 using information and attending and completing tasks. Tr. 328-35. Ms. Ozuna
14 opined Plaintiff was markedly limited in five functional domains. Tr. 404-06.
15 Defendant concedes error in the ALJ’s consideration of statements from the
16 claimant’s “mother”⁵ and “teacher.” ECF No. 19 at 4. Plaintiff’s Motion is
17 unopposed as to the ALJ’s error in consideration of the lay witness statements.

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19 ⁵ The index to the administrative transcript erroneously refers to the statement of
20 Plaintiff’s grandmother as the statement of “Claimant’s Mother.”

1 Last, given the ALJ's error in weighing the medical opinion testimony of Dr.
2 Gordy, Defendant also concedes the ALJ erred in analyzing whether Plaintiff met
3 or functionally equaled the severity of a listed impairment. ECF No. 19 at 5.

4 Accordingly, as both parties agree that the ALJ's decision was erroneous,
5 the sole question before the Court is the proper remedy and whether the Court
6 should remand for additional administrative proceedings or remand for an
7 immediate calculation of benefits. Plaintiff argues this case should be remanded
8 for an award of benefits. ECF Nos. 15, 20. Defendant has cross-moved requesting
9 the matter be remanded for further proceedings for reconsideration of the
10 improperly analyzed medical and lay evidence. ECF No. 19.

11 **B. Remand Standard**

12 "The decision whether to remand a case for additional evidence, or simply to
13 award benefits is within the discretion of the court." *Sprague v. Bowen*, 812 F.2d
14 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*, 761 F.2d 530 (9th Cir. 1985)).
15 When the Court reverses an ALJ's decision for error, the Court "ordinarily must
16 remand to the agency for further proceedings." *Leon v. Berryhill*, 880 F.3d 1041,
17 1045 (9th Cir. 2017); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) ("the
18 proper course, except in rare circumstances, is to remand to the agency for
19 additional investigation or explanation"); *Treichler v. Comm'r of Soc. Sec. Admin.*,
20 775 F.3d 1090, 1099 (9th Cir. 2014). However, in a number of Social Security

1 cases, the Ninth Circuit has “stated or implied that it would be an abuse of
2 discretion for a district court not to remand for an award of benefits” when three
3 conditions are met. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014)
4 (citations omitted). Under the credit-as-true rule, where (1) the record has been
5 fully developed and further administrative proceedings would serve no useful
6 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting
7 evidence, whether claimant testimony or medical opinion; and (3) if the improperly
8 discredited evidence were credited as true, the ALJ would be required to find the
9 claimant disabled on remand, the Court will remand for an award of benefits.
10 *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir. 2017). Even where the three
11 prongs have been satisfied, the Court will not remand for immediate payment of
12 benefits if “the record as a whole creates serious doubt that a claimant is, in fact,
13 disabled.” *Garrison*, 759 F.3d at 1021.

14 **C. Analysis**

15 The Court concludes that each of the credit-as-true factors is satisfied and
16 that remand for the calculation and award of benefits is warranted.

17 *1. Completeness of the Record*

18 As to the first element, administrative proceedings are generally useful
19 where the record “has [not] been fully developed,” *Garrison*, 759 F.3d at 1020,
20 there is a need to resolve conflicts and ambiguities, *Andrews v. Shalala*, 53 F.3d

1 1035, 1039 (9th Cir. 1995), or the “presentation of further evidence ... may well
2 prove enlightening” in light of the passage of time, *I.N.S. v Ventura*, 537 U.S. 12,
3 18 (2002). *Cf. Nguyen v. Chater*, 100 F.3d 1462, 1466–67 (9th Cir. 1996)
4 (remanding for ALJ to apply correct legal standard, to hear any additional
5 evidence, and resolve any remaining conflicts); *Byrnes v. Shalala*, 60 F.3d 639,
6 642 (9th Cir. 1995) (same); *Dodrill v. Shalala*, 12 F.3d 915, 918, 919 (9th Cir.
7 1993) (same); *Bunnell v. Sullivan*, 947 F.2d 341, 348 (9th Cir. 1991) (en banc)
8 (same).

9 Here, the record is sufficiently developed. It contains significant evidence
10 dating from Plaintiff’s second to sixth grade years from academic sources, lay
11 witnesses, and multiple treating providers (both physical and mental health
12 physicians, therapists, and specialists). The record also contains ample testimony
13 from two full administrative hearings, including from Plaintiff and her
14 grandmother, as well as Dr. Gordy, the medical expert called to testify at the
15 second hearing.

16 Defendant contends further proceedings are necessary because Dr. Gordy’s
17 testimony was “somewhat ambiguous about when he thought the claimant’s
18 impairments worsened to the point of meeting the listing.” ECF No. 19 at 5. A
19 court may also remand for the limited purpose of determining when a claimant’s
20 disability began if that date is not clear from the credited-as-true opinion. *See*

1 *Dominguez v. Colvin*, 808 F.3d 403, 409 (9th Cir. 2015). However, Dr. Gordy
2 clearly testified that Plaintiff medically met listing 112.02 in July 2013:

3 And best I can tell, the – difficulties really go back to the – maybe 2013. I
4 mean, you could make a case for going back to 2012, when they did – when
5 she was having the difficulties with the – whatever that was – when she was
6 daydreaming, or whatever they’re going to call it, when they did the EEG.

7 But the solid material really starts with 3F, which was in July of ‘13.

8 . . .

9 Prior to that time, I don’t think she met that listing, because she was actually
10 functioning better. She was having some difficulty in school, but it was not
11 to the degree that she does have now, –

12 . . .

13 – which is part of – the difficulty here is that, as time goes by, these kinds of
14 situations become more and more apparent.

15 Tr. 108-09. Dr. Gordy’s later testimony that Plaintiff’s limitation in the single
16 domain of attending and completing tasks became marked in 2014 as opposed to
17 2013, pertained to the functional equivalence analysis. Moreover, the testimony
18 does not create an ambiguity as to Dr. Gordy’s testimony regarding when
19 Plaintiff’s limitations met the listing.

20 Defendant also contends that further proceedings are warranted because Dr.
21 Gordy’s testimony regarding whether Plaintiff’s limitations functionally equaled
22 the listing was “somewhat equivocal” because he used the words “I think” in
23 relaying his opinion pertaining to the domains. ECF No. 19 at 5 (citing Tr. 110 (“I
24 think I’m going to call it marked”); Tr. 111 (“I think I’m going to have to go with
25 marked”); Tr. 112). In some contexts, the words “I think” can be construed as
26 words of equivocation. *See Arnold v. Runnels*, 421 F.3d 859, 867 (9th Cir. 2005)

1 (discussing invocation of criminal suspect's rights). However, in this context, a
2 review of Dr. Gordy's testimony reveals he used the phrase "I think" sixteen times
3 as part of his manner of relaying his thought process. Tr. 92, 93, 97, 99, 100, 101,
4 104, 105, 110, 111, 112, 116. Dr. Gordy is an experienced psychiatrist and
5 medical expert who has worked for the Social Security Administration since 2000,
6 Tr. 597; he was available for questioning or any clarification at the hearing. If the
7 ALJ has appropriate reasons for rejecting evidence, "it is both reasonable and
8 desirable to require the ALJ to articulate them in the original decision." *Harman*,
9 211 F.3d 1172, 1179 (9th Cir. 2000) (*quoting Varney v. Sec'y of Health & Human*
10 *Serv.*, 859 F.2d 1396, 1399 (9th Cir. 1988)). Here, the ALJ did not reject Dr.
11 Gordy's opinion because it was equivocal or insufficiently precise. Tr. 26. Further
12 clarification of Dr. Gordy's testimony as to what "I think" meant, in this context, is
13 not an outstanding issue that must be resolved.

14 Finally, Defendant contends the Court should remand this case for further
15 proceedings because "there is evidence that conflicts with the finding of
16 disability." ECF No. 19 at 6. The evidentiary conflicts Defendant cites are: (1)
17 Plaintiff's fourth-grade teacher's (Emily Sutliff) comment that she did not think
18 Plaintiff had a learning disability and struggles with motivation; and (2) the state
19 agency physicians' opinions that Plaintiff had less than marked mental limitations.
20 ECF No. 19 at 6-7 (citing Tr. 25, 335). However, Ms. Sutliff's January 2014

1 Teacher Questionnaire is entirely consistent with Dr. Gordy’s opinion. She opined
2 Plaintiff has “serious” to “very serious” problems in seven areas in the domain of
3 acquiring and using information, Tr. 329, and six areas in attending and completing
4 tasks, Tr. 330, as well as slight to obvious problems in interacting and relating with
5 others, Tr. 331. Defendant references Ms. Sutliff’s additional comments stating
6 that Plaintiff’s “struggle is with motivation, confidence, and ability to complete
7 tasks with effort,” and that she “would not think of [Plaintiff] having a learning
8 disability.” Tr. 335. Ms. Sutliff is not a psychologist and it is not evident whether
9 Ms. Sutliff was aware the school psychologist had recently determined Plaintiff
10 was eligible for special education support. *See* Tr. 344 (Dec. 3, 2013 notice of
11 determination of qualification for special education support); Tr. 328 (Ms. Sutliff’s
12 assessment indicating reading and math instructional levels were below grade level
13 and special education services offered were “none at this time.”). The
14 Individualized Educational Program (IEP) was not developed and implemented
15 until February 2014, after Ms. Sutliff’s assessment. Tr. 340. Contrary to
16 Defendant’s contention, Ms. Sutliff’s assessment does not present a factual conflict
17 creating serious doubt that Plaintiff is disabled warranting remand. *See Treichler*,
18 775 F.3d at 1101, 1107.

19 Neither do the state agency physicians’ opinions, which were rendered on
20 March 4, 2014 and May 15, 2014, Tr. 139-59, prior to the submission of over 300

1 pages of additional medical evidence which Dr. Gordy testified reflected a
2 deterioration in Plaintiff's symptoms. Tr. 93. Though the state agency physicians
3 assessed slightly less restrictive limitations, they concluded Plaintiff had
4 limitations in at least five out of six domains, and upon reconsideration noted that
5 Plaintiff "is having more anxiety, panic and learning complications." Tr. 140-48,
6 150-59. Moreover, no case would ever meet the credit-as-true requirements if
7 mere divergence with the state agency physicians' opinions was always a sufficient
8 evidentiary conflict to merit further administrative proceedings. Ninth Circuit
9 precedent and the objectives of the credit-as-true rule foreclose the argument that
10 "remand for the purpose of allowing the ALJ to have a mulligan qualifies as a
11 remand for a 'useful purpose.'" *Garrison*, 759 F.3d at 1021; *see Benecke*, 379
12 F.3d at 595 ("Allowing the Commissioner to decide the issue again would create
13 an unfair 'heads we win; tails, let's play again' system of disability benefits
14 adjudication.").

15 The Court concludes the record is fully developed and further administrative
16 proceedings would serve no useful purpose. The first prong of the credit-as-true
17 rule is met.

1 2. *ALJ Error*

2 As noted above, Defendant concedes the ALJ failed to provide adequate
3 reasons for rejecting the opinion of Dr. Gordy, therefore the second prong of the
4 credit-as-true rule is met.

5 3. *Crediting as True Demonstrates Disability*

6 The third prong of the credit-as-true rule is satisfied because if Dr. Gordy's
7 expert medical testimony were credited as true, the ALJ would be required to find
8 Plaintiff disabled on remand, as Plaintiff would meet the criteria for or functionally
9 equal the severity of listing 112.02. *See Holden v. Berryhill*, 731 Fed.Appx. 606,
10 609 (9th Cir. 2018) (remanding for an immediate award of benefits after crediting
11 expert medical testimony).

12 4. *Serious Doubt*

13 Finally, the record as a whole does not leave serious doubt as to whether
14 Plaintiff is disabled. *Garrison*, 759 F.3d at 1021. Defendant fails to offer *any*
15 persuasive argument to the contrary. ECF No. 19. Plaintiff's mental health
16 impairments and their serious effects on her functionality over the course of years
17 are documented in the academic, medical, and lay witness evidence of record,
18 which was extensively and accurately discussed in Plaintiff's Motion prompting
19 Defendant's concession of error. ECF No. 15. Dr. Gordy's testimony, an
20 experienced psychiatrist and medical expert, Tr. 596-99, is the sole medical

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2. Defendant’s Motion for Summary Judgment, ECF No.19, is **GRANTED**
in part and **DENIED** in part.

3. The Court enter **JUDGMENT in favor of Plaintiff REVERSING and**
REMANDING the matter to the Commissioner of Social Security for
immediate calculation and award of benefits consistent with the findings of this
Court.

The District Court Executive is directed to file this Order, provide copies to
counsel, and **CLOSE THE FILE.**

DATED October 24, 2018.

s/Mary K. Dimke
MARY K. DIMKE
UNITED STATES MAGISTRATE JUDGE