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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Dawn Michele Thompson,) No. CV-12-714-PHX-LOA
10 Plaintiff,) **ORDER**
11 vs.)
12)
13 Carolyn W. Colvin, Commissioner of the)
14 Social Security Administration,)
15 Defendant.)

16 Plaintiff seeks review of the Social Security Administration Commissioner’s decision
17 denying her application for disability insurance benefits and supplemental security income.
18 The parties, who have consented to proceed before the undersigned United States Magistrate
19 Judge, have filed briefs in accordance with local Rules of Practice (“LRCiv”)16.1. After
20 review of the record, briefing and applicable law, the decision of the Commissioner is
21 reversed and the matter is remanded for an award of benefits.

22 **I. Procedural Background**

23 On August 14, 2009, Plaintiff filed applications for Social Security Disability
24 Insurance Benefits and Supplemental Security Income under Titles II and XVI, respectively,
25 of the Social Security Act. 42 U.S.C. §§ 401-433 and §§ 1381-1383c (AR¹ 187-201).
26

27 ¹ Citations to “AR” are to the administrative record.

1 Plaintiff was 41 years old when she filed the applications and has a high school education.
2 (AR 45, 231) Plaintiff claimed in the applications she was unable to work because of a
3 disabling condition on June 1, 2008, and that she remains disabled. (AR 187, 195) Plaintiff
4 identified depression and degenerative disc disease as the conditions that limited her ability
5 to work. (AR 226, 54)

6 Plaintiff's applications were denied by the Social Security Administration ("SSA")
7 on February 12, 2010. (AR 126-133) Following Plaintiff's request for reconsideration, the
8 SSA affirmed the denial of the applications on August 3, 2010. (AR 139-145) Pursuant to
9 Plaintiff's request, AR 146, a hearing was held on May 5, 2011, before Administrative Law
10 Judge ("ALJ") Patrick Kilgannon. (AR 38-81) In a decision, dated May 18, 2011, the ALJ
11 ruled Plaintiff is not entitled to disability benefits because she has not been under a disability
12 as defined in the Social Security Act from the alleged date of onset through the date of the
13 decision. (AR 20-31) On February 8, 2012, the Appeals Council denied Plaintiff's request
14 for review of the ALJ's decision. (AR 1-3) As a result of the denial, the ALJ's decision
15 became the final decision of the Commissioner of the SSA. (AR 1)

16 Having exhausted the administrative review process, Plaintiff sought judicial review
17 of the Commissioner's decision on April 4, 2012, by filing a Complaint in this District Court
18 pursuant to 42 U.S.C. § 405(g). (Doc. 1) On August 21, 2012, Plaintiff filed an Opening
19 Brief pursuant to LRCiv 16.1, in which she seeks a remand for an award of disability benefits
20 or, alternatively, a remand for further administrative proceedings. (Doc. 17) On September
21 20, 2012, Defendant filed an Opposition to Plaintiff's Opening Brief. (Doc. 18) Plaintiff then
22 filed a Reply Brief on October 9, 2012. (Doc. 19)

23 **II. Applicable Legal Standards**

24 **A. Standard of Review**

25 The Court must affirm the ALJ's findings if they are supported by substantial
26 evidence and are free from reversible error. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.

1 1998); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). Substantial evidence is more
2 than a scintilla, but less than a preponderance; it is “such relevant evidence as a reasonable
3 mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.
4 389, 401 (1971); *see also Reddick*, 157 F.3d at 720. In determining whether substantial
5 evidence supports the ALJ’s decision, a district court considers the record as a whole,
6 weighing both the evidence that supports and that which detracts from the ALJ’s conclusions.
7 *Reddick*, 157 F.3d at 720; *Tylitzki v. Shalala*, 999 F.2d 1411, 1413 (9th Cir. 1993). The ALJ
8 is responsible for resolving conflicts, ambiguity, and determining credibility. *Andrews v.*
9 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
10 Cir. 1989). “If the evidence can reasonably support either affirming or reversing the
11 Secretary’s conclusion, the court may not substitute its judgment for that of the Secretary.”
12 *Reddick*, 157 F.3d at 720-21.

13 **B. Sequential Evaluation Process**

14 To be eligible for Social Security disability benefits, a claimant must show an
15 “inability to engage in any substantial gainful activity by reason of any medically
16 determinable physical or mental impairment which can be expected to result in death or
17 which has lasted or can be expected to last for a continuous period of not less than 12
18 months.” 42 U.S.C. § 423(d)(1)(a); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
19 1999). The claimant bears the initial burden of proving disability. 42 U.S.C. § 423(d)(5);
20 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). A five step procedure is used to
21 evaluate a disability claim:

22 In step one, the Secretary determines whether a claimant is currently engaged
23 in substantial gainful activity. If so, the claimant is not disabled. 20 C.F.R. §
24 404.1520(b). In step two, the Secretary determines whether the claimant has
25 a “medically severe impairment or combination of impairments,” as defined
26 in 20 C.F.R. § 404.1520(c). If the answer is no, the claimant is not disabled.
27 If the answer is yes, the Secretary proceeds to step three and determines
whether the impairment meets or equals a “listed” impairment that the
Secretary has acknowledged to be so severe as to preclude substantial gainful
activity. 20 C.F.R. § 404.1520(d). If this requirement is met, the claimant is

1 conclusively presumed disabled; if not, the Secretary proceeds to step four. At
2 step four, the Secretary determines whether the claimant can perform "past
3 relevant work." 20 C.F.R. § 404.1520(e). If the claimant can perform such
4 work, she is not disabled. If the claimant meets the burden of establishing an
inability to perform prior work, the Secretary must show, at step five, that the
claimant can perform other substantial gainful work that exists in the national
economy. 20 C.F.R. § 404.1520(f).

5 *Reddick*, 157 F.3d at 721.

6 **III. ALJ Decision**

7 Applying the five-step procedure in this case, the ALJ determined Plaintiff has not
8 engaged in substantial gainful activity since the alleged onset date of her disabling condition.
9 (AR 25) The ALJ found Plaintiff has the following "severe" impairments within the meaning
10 of the regulations: degenerative disc disease of the cervical and lumbar spines, depression,
11 and multiple sclerosis. (AR 25) The ALJ determined, however, that Plaintiff does not have
12 an impairment or combination of impairments that meets or medically equals a listed
13 impairment. (AR 26) As a result, the ALJ assessed Plaintiff's residual functional capacity²
14 ("RFC"). (AR 27-30) The ALJ determined Plaintiff has the RFC to perform a range of light
15 work as defined in 20 C.F.R. § 404.1567(b) and § 416.967(b), and SSR³ 83-10. (AR 27) He
16 found Plaintiff is able to lift and/or carry twenty pounds occasionally and ten pounds
17 frequently; stand and/or walk for six hours out of an eight-hour workday with regular breaks;
18 and sit for six hours out of an eight-hour workday with regular breaks, among other
19 limitations. (AR 27) The ALJ further determined that although Plaintiff's RFC is such that
20 she is unable to perform any of her past relevant work, there are jobs that exist in significant
21 numbers in the national economy that Plaintiff can perform. (AR 30) Based on these
22 findings, the ALJ concluded Plaintiff has not been under a "disability," as defined in the

23
24 ² The term "residual functional capacity" means the most an individual can do after
25 considering the effects of physical and/or mental limitations that affect the ability to perform
work-related tasks. *See* 20 C.F.R § 404.1545(a)(1-2).

26 ³ "Social Security Ruling"
27

1 Social Security Act, from the alleged date of onset through the date of the ALJ's decision.
2 (AR 31) Consequently, the ALJ ruled Plaintiff is not entitled to disability insurance benefits
3 or supplemental security income. (AR 25)

4 **IV. Analysis**

5 Plaintiff contends in her opening brief the Commissioner's decision should be
6 reversed and the case remanded for an award of benefits. Plaintiff argues the ALJ erred by
7 rejecting the assessments of two treating physicians and an examining psychologist; relying
8 on an assessment from a non-examining state agency physician who reviewed only part of
9 the record; and rejecting Plaintiff's symptom testimony in the absence of clear and
10 convincing reasons for doing so. In the response brief, Defendant disputes each of Plaintiff's
11 arguments and contends the administrative decision is supported by substantial evidence and
12 free of harmful legal error.

13 **A. Treating Physicians' Assessments**

14 Plaintiff argues the ALJ erred as a matter of law by rejecting the opinions of two
15 treating physicians, Eric Feldman, M.D., and Daniel Torzala, M.D. (Doc. 17 at 18-21)
16 Plaintiff contends the ALJ's conclusory dismissals of these doctors' assessments were
17 unsupported by sufficient reasons. Plaintiff claims the ALJ needed to do more than simply
18 assert their opinions are not consistent with the totality of the evidence.

19 The opinion of a treating physician is generally entitled to more weight than the
20 opinion of a non-treating physician, "since these sources are likely to be the medical
21 professionals most able to provide a detailed, longitudinal picture" of a claimant's medical
22 impairments. 20 C.F.R. § 404.1527(c)(2). "Because treating physicians are employed to cure
23 and thus have a greater opportunity to know and observe the patient as an individual, their
24 opinions are given greater weight than the opinions of other physicians." *Smolen v. Chater*,
25 80 F.3d 1273, 1285 (9th Cir. 1996). A treating physician's opinion, however, is not
26 necessarily conclusive and an ALJ may disregard the opinion whether or not the opinion is
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1 contradicted. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Where a treating
2 physician’s opinion is uncontradicted, an ALJ may reject it only by presenting clear and
3 convincing reasons for doing so. *Id.* If a treating doctor’s opinion is contradicted by another
4 doctor, the ALJ can reject it only by providing “‘specific and legitimate reasons’ supported
5 by substantial evidence in the record.” *Reddick*, 157 F.3d at 725 (citing *Lester v. Chater*, 81
6 F.3d 821, 830 (9th Cir. 1995)). The ALJ can “meet this burden by setting out a detailed and
7 thorough summary of the facts and conflicting clinical evidence, stating his interpretation
8 thereof, and making findings.” *Magallanes*, 881 F.2d at 751. Moreover, an ALJ is not
9 required to accept a brief and conclusory opinion from a treating physician that is
10 unsupported with clinical findings or by the record as a whole. *Id.*; *Batson v. Commissioner*
11 *of Social Security Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). When there are conflicting
12 medical opinions, the ALJ must determine credibility and resolve the conflict. *Thomas v.*
13 *Barnhart*, 278 F.3d 947, 956-57 (9th Cir. 2002).

14 **1. Eric Feldman, M.D.**

15 Eric Feldman, M.D., a physician at the Center for Orthopedic Research and Education
16 Institute (“CORE”),⁴ began caring for Plaintiff in October 2009. (AR 552-553) Plaintiff’s
17 chief complaints during her initial visit at the CORE Institute were low back pain with
18 radiating tingling and numbness into the left leg, and right-sided neck pain that radiates into
19 the right scapular region. (*Id.*) In November 2009, Dr. Feldman administered lumbar medial
20 branch nerve blocks. (AR 556) According to Plaintiff’s brief, “[t]his is a procedure to prevent
21 sensory nerve impulses from reaching the central nervous system, usually by injecting an
22 anesthetic solution into the peripheral nerve or by electrically stimulating the nerve.” (Doc.
23 17 at 4)

24
25 ⁴ Plaintiff’s opening brief states Dr. Feldman is an orthopedist, though the Court has
26 been unable to locate anything in the medical records to confirm this medical specialty.
27 Defendant does not, however, dispute Plaintiff’s description of Dr. Feldman’s specialty.

1 Plaintiff had a cervical MRI at the CORE Institute in December 2009 which showed
2 a “C5-6 disc protrusion with mild ventral cord flattening and moderate foraminal
3 compromise.” (AR 557-558) Plaintiff’s follow-up visit with Dr. Feldman on December 10,
4 2009 indicates she also had a lumbar spine MRI that revealed a left lateral disc protrusion at
5 L4-L5. (AR 559) In addition, the office notes reflect the lumbar medial branch nerve blocks
6 provided no relief. (*Id.*) Plaintiff had another cervical MRI in February 2010 that revealed
7 “spondylosis at C5-6 with a posterior disc and spur approximating the cord, particularly
8 slightly to the right of the midline, and producing some narrowing of the right neural
9 foramen.” (AR 562)

10 The medical records show Plaintiff saw Dr. Feldman professionally on numerous
11 occasions in 2010 and at least once in 2011. (AR 561, 706-711, 714, 718 and 720-721) He
12 prescribed physical therapy and medication for pain management. (*Id.*) He also performed
13 several procedures during that period including cervical facet joint injections, lumbar
14 epidural steroid injections, and cervical medial branch nerve blocks. (AR 707-709, 718)

15 Dr. Feldman completed a Medical Assessment Of Ability To Do Work Related
16 Physical Activities (“Medical Assessment”) and a Pain Functional Capacity (RFC)
17 Questionnaire (“Pain Questionnaire”) on May 3, 2011. (AR 728-732). In the Medical
18 Assessment, Dr. Feldman opined that Plaintiff could sit for less than six hours in an eight-
19 hour work day, stand or walk for less than two hours in an eight-hour workday, and
20 occasionally lift or carry less than ten pounds, among other limitations. (AR 728-730) He
21 stated Plaintiff would have to alternate sitting and standing every twenty minutes due to her
22 symptoms. (*Id.* at 729) In the Pain Questionnaire, Dr. Feldman identified Plaintiff’s pain as
23 “severe” which means “[e]xtremely impaired due to pain which precludes ability to
24 function.” (AR 731) He stated this degree of pain can reasonably be expected to result from
25 objective clinical or diagnostic findings documented by him or elsewhere in Plaintiff’s
26 medical records. (*Id.*) He further indicated Plaintiff’s pain is sufficiently severe to interfere

1 with attention and concentration on a constant basis. (*Id.*)

2 The ALJ assigned “little weight” to Dr. Feldman’s opinions regarding Plaintiff’s work
3 limitations because Dr. Feldman “fail[s] to explain or justify the limitations given.” (AR 29)
4 In addition, the ALJ found Dr. Feldman’s opinions “are not consistent with the totality of
5 evidence or with claimant’s own statements regarding her level of function.” (*Id.*)

6 Dr. Feldman’s opinions regarding Plaintiff’s work limitations are contradicted by the
7 state agency examining physician, William Chafee, M.D., and the state agency non-
8 examining physician, Ernest Griffith, M.D. (*Compare* AR 728-732, with AR 501-508 and
9 AR 534-541) Accordingly, to reject Dr. Feldman’s opinions, the ALJ is required to provide
10 specific and legitimate reasons supported by substantial evidence in the record. *See Reddick*,
11 157 F.3d at 725. Applying that standard, the Court agrees with Plaintiff and finds the ALJ’s
12 reasons for rejecting Dr. Feldman’s opinions are insufficient as a matter of law.

13 First, the ALJ’s assertion that Dr. Feldman’s opinions “fail to explain or justify the
14 limitations given” is not a basis to reject the opinions. *See Smolen v. Chater*, 80 F.3d 1273,
15 1288 (9th Cir. 1996) (finding that even where a treating physician fails to provide comments
16 to support his opinions, the ALJ could not reject them without providing proper reasons for
17 doing so). Moreover, the ALJ gives no indication he reviewed all of Dr. Feldman’s records
18 to determine if the records themselves provide adequate support and justification for Dr.
19 Feldman’s opinions. He cites only two of Dr. Feldman’s progress notes in the written
20 decision, one regarding the lack of multiple sclerosis symptoms Plaintiff was exhibiting in
21 February 2011, and the second to show Plaintiff was diagnosed with disc protrusions. (AR
22 28) The Court, therefore, finds that the ALJ’s first reason for rejecting Dr. Feldman’s
23 opinions is insufficient.

24 Second, the ALJ’s remaining reasons for rejecting Dr. Feldman’s opinions are vague
25 and conclusory. He simply says the opinions “are not consistent with the totality of evidence
26 or with claimant’s own statements regarding her level of function.” (AR 29) He fails,

1 however, to cite the “totality of evidence,” or any aspect thereof, on which he relies to reach
2 his conclusion. The ALJ also does not identify the “claimant’s own statements regarding her
3 level of function” on which he relies to reject Dr. Feldman’s opinions. The ALJ’s entire
4 discussion of Dr. Feldman’s work-related assessments is comprised of one short paragraph,
5 a paragraph that also includes a discussion of the opinions of other providers. (AR 29)

6 Nothing in Defendant’s responsive brief affects the Court’s analysis. Defendant
7 contends the ALJ gave specific and legitimate reasons for giving little weight to Dr.
8 Feldman’s opinions, but she provides little to support that contention. (Doc. 18 at 14)
9 Defendant cites one progress note by Dr. Feldman from February 2011 in which Dr. Feldman
10 reported “diffuse tenderness to palpation” along the spine, “mildly limited lumbar flexion and
11 lumbar extension with end-range pain,” “no synovitis or effusion or ligamentous laxity in the
12 lower extremity” and “no pedal edema,” among other findings. (AR 706) Although the ALJ
13 cited this same progress note in his decision, he did so in the context of addressing the status
14 of Plaintiff’s multiple sclerosis symptoms, not as a basis to reject Dr. Feldman’s opinions
15 regarding Plaintiff’s work limitations. (AR 28) The Court will not consider Defendant’s
16 “after the fact” attempt to offer her own specific reasons for the ALJ’s conclusory rejection
17 of Dr. Feldman’s opinions where the ALJ himself failed to provide such reasons.

18 Moreover, Defendant misstates what the ALJ said in rejecting Dr. Feldman’s
19 opinions. Defendant claims “the ALJ found that the physicians’ assessments were
20 inconsistent with the evidence of record as a whole, including the physicians’ own objective
21 findings.” (Doc. 18 at 14) The decision itself, however, states, “these opinions are not
22 consistent with the totality of evidence or with the claimant’s own statements regarding her
23 level of function.” (AR 29) The ALJ said nothing about Dr. Feldman’s opinions being
24 inconsistent with his objective findings.

25 Accordingly, the Court finds the ALJ’s reasons for rejecting Dr. Feldman’s opinions
26 are not “specific and legitimate,” nor did he support them with “substantial evidence in the
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1 record.” *See Reddick*, 157 F.3d at 725. As noted above, Dr. Feldman saw Plaintiff numerous
2 times between October 2009 and February 2011. He conducted several examinations,
3 prescribed various medications, and performed a number of procedures in an attempt to
4 reduce Plaintiff’s back pain. His opinions regarding Plaintiff’s work-related limitations are
5 entitled to special deference. The ALJ’s cursory discussion and rejection of Dr. Feldman’s
6 opinions fail to meet the required standard.

7 **2. Daniel T. Torzala, Jr., M.D.**

8 It appears from the medical records that Dr. Torzala, a physician at Phoenix
9 Neurology and Sleep Medicine, began treating Plaintiff in June 2010. (AR 667-680) He
10 diagnosed Plaintiff with multiple sclerosis and migraine headaches. (AR 679) The MRIs of
11 Plaintiff’s brain in March and December 2009 showed white matter consistent with multiple
12 sclerosis. (AR 367, 684) The records reflect that, in addition to the June 2010 examination,
13 Dr. Torzala saw Plaintiff three times in August 2010, once each in September and October
14 2010, and once in late December 2010. (AR 667-680)

15 Dr. Torzala identified Plaintiff’s multiple sclerosis as “relapsing remitting multiple
16 sclerosis.” (AR 667, 669 and 675) He prescribed immunomodulatory therapy with the drugs
17 Copazone and Rebif, but Plaintiff could not tolerate either one. (AR 668) Dr. Torzala
18 believed Plaintiff to be a good candidate for oral therapy and indicated he would refer her to
19 an “MS expert” regarding that form of therapy. (*Id.*)

20 Dr. Torzala completed a Medical Assessment Of Ability To Do Work Related
21 Physical Activities (“Medical Assessment”) on April 14, 2011. (AR 681-683) He identified
22 Plaintiff’s diagnosed physical impairments as “MS” and “lumbar radiculopathy.” (AR 681)
23 Regarding Plaintiff’s exertional limitations, Dr. Torzala opined Plaintiff could sit for a total
24 of four hours in an eight-hour work day, and stand or walk for at least two hours in an eight-
25 hour workday. (*Id.*) He further stated Plaintiff could lift or carry twenty pounds occasionally
26 or even frequently. (*Id.*) Dr. Torzala also identified certain postural and environmental

1 limitations, and minor limitations regarding Plaintiff's ability to use her hands. (AR 682-683)
2 When asked to describe the findings that support the identified limitations, Dr. Torzala
3 stated, "MS" and explained that it would be dangerous for Plaintiff "to have exposure to heat
4 as this may cause new symptoms/impairments or exacerbate prior deficits." (AR 683)

5 The ALJ, after the very limited discussion explaining his rejection of Dr. Feldman's
6 opinions set forth above, states the following with regard to Dr. Torzala's opinion:

7 This is also the case with the opinion of Daniel Torzala, M.D. on April 14,
8 2011, which found additional functional limitations.

9 (AR 29) Thus, the ALJ appears to be relying on the same reasons he relied on to reject Dr.
10 Feldman's opinions: that Dr. Torzala's opinion fails to explain or justify the limitations given
11 and they are not consistent with the totality of the evidence or with the claimant's own
12 statements regarding her level of function. (AR 29)

13 The Court finds the ALJ's one-line reference to Dr. Torzala's opinion falls well short
14 of the standard required to properly reject a treating physician's opinion. The ALJ's
15 treatment of Dr. Torzala's opinion relies on the same unsupported and conclusory reasons
16 used to reject Dr. Feldman's opinions. Those reasons are equally deficient as applied to Dr.
17 Torzala. Accordingly, the Court finds the ALJ has failed to provide "specific and legitimate
18 reasons supported by substantial evidence in the record." for rejecting Dr. Torzala's opinion
19 regarding Plaintiff's work-related limitations. *See Reddick*, 157 F.3d at 725.

20 As with Dr. Feldman, nothing in Defendant's responsive brief alters the Court's
21 analysis. Defendant again attempts to offer her own specific reasons for the ALJ's conclusory
22 rejection of Dr. Torzala's opinions where the ALJ failed to do so. In attempting to support
23 her contention that the ALJ gave specific and legitimate reasons for rejecting Dr. Torzala's
24 opinion, Defendant cites two of Dr. Torzala's progress notes regarding Plaintiff's condition.
25 (Doc. 18 at 14-15) Although the two progress notes were referenced in the ALJ's decision,
26 they were not cited as grounds for the ALJ's rejection of Dr. Torzala's opinion regarding

1 Plaintiff's work-related limitations. (AR 28-29) As discussed above, the ALJ failed to
2 provide specific reasons for rejecting Dr. Torzala's opinion and nothing in Defendant's
3 responsive brief demonstrates otherwise.

4 The ALJ's failure to provide specific and legitimate reasons based on substantial
5 evidence in the record for rejecting the opinions of two treating physicians, Drs. Feldman and
6 Torzala, was legal error. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1038 n.10 (9th Cir. 2007)
7 (holding that "[i]t was also legal error for the ALJ to discount the opinions of [the plaintiff's]
8 treating physicians without providing specific and legitimate reasons for doing so.");
9 *Ghokassian v. Shalala*, 41 F.3d 1300, 1303 (9th Cir. 1994) (holding "that the ALJ committed
10 a legal error when he failed to grant deference to the conclusions of [plaintiff's] treating
11 physician."). Moreover, the ALJ's error here was not harmless. *See Molina v. Astrue*, 674
12 F.3d 1104, 1115 (9th Cir. 2012) (invoking the general principle "that an ALJ's error is
13 harmless where it is 'inconsequential to the ultimate nondisability determination.'") (citations
14 omitted). Based on the ALJ's error, the Court will order that the decision be reversed and the
15 case be remanded to the SSA.⁵

16 **B. Remand for Further Proceedings or Award of Benefits**

17 The decision whether to remand a case for additional evidence or for an award of
18 benefits is within the discretion of the district court. *Swenson v. Sullivan*, 876 F.2d 683, 689
19 (9th Cir. 1989). "If additional proceedings can remedy defects in the original administrative
20 proceedings, a social security case should be remanded. Where, however, a rehearing would
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22 ⁵ Because this matter is being remanded based on the ALJ's legal error regarding the
23 treating physicians' opinions, the Court need not, and declines to, reach Plaintiff's remaining
24 arguments. The Court notes, however, that in rejecting the examining psychologist's opinion,
25 the ALJ, after summarizing the psychologist's findings, said only that "[t]he undersigned
26 finds this opinion unpersuasive in light of the totality of the evidence of record." (AR 29) As
27 with the treating physicians, the ALJ provided nothing specific to support his conclusory
rejection of the examining psychologist's opinion.

1 simply delay receipt of benefits, reversal [and an award of benefits] is appropriate.” *Lewin*
2 *v. Schweiker*, 654 F.2d 631, 635 (9th Cir. 1981).

3 Moreover, “[w]here the Commissioner fails to provide adequate reasons for rejecting
4 the opinion of a treating or examining physician, we credit that opinion ‘as a matter of law.’”
5 *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995) (quoting *Hammock v. Bowen*, 879 F.2d
6 498, 502 (9th Cir. 1989)). Courts credit improperly rejected evidence and remand for benefits
7 when: “(1) the ALJ has failed to provide legally sufficient reasons for rejecting such
8 evidence, (2) there are no outstanding issues that must be resolved before a determination of
9 disability can be made, and (3) it is clear from the record that the ALJ would be required to
10 find the claimant disabled were such evidence credited.” *Harman v. Apfel*, 211 F.3d 1172,
11 1178 (9th Cir. 2000) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996)). If this
12 test is satisfied with respect to a treating physician’s opinion, “then remand for determination
13 and payment of benefits is warranted regardless of whether the ALJ *might* have articulated
14 a justification for rejecting [the treating physician’s] opinion.” *Id.* at 1179 (emphasis in
15 original).

16 Here, applying the three-part test, the Court has already decided the first part by
17 finding the ALJ failed to provide legally sufficient reasons for rejecting Dr. Feldman’s and
18 Dr. Torzala’s opinions. Regarding the second part of the test, the Court is aware of no
19 outstanding issues that must be resolved before a determination of disability can be made.
20 Defendant argues that, if the Court decides to remand the case, it should do so for further
21 proceedings to allow further development of the record. (Doc. 18 at 17-18) Defendant fails
22 to identify, however, what issues must be resolved and what aspect of the record must be
23 further developed.

24 With respect to the third part of the test, the Court finds it is clear from the record that
25 the ALJ would be required to find Plaintiff disabled if the treating physicians’ opinions were
26 credited as true. As Plaintiff points out in the opening brief, the vocational expert testified
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1 at the hearing that the physical capacity assessments prepared by both Dr. Feldman and Dr.
2 Torzala would preclude even sedentary work. (AR 79) The expert further testified that the
3 pain assessment prepared by Dr. Feldman would preclude all work. (AR 70-80) Thus, the
4 vocational expert's testimony establishes that, taking the opinions of Dr. Feldman and Dr.
5 Torzala as true, the ALJ would be required to find Plaintiff disabled. For these reasons, the
6 Court finds the three-part test is satisfied here and, consequently, remand for an award of
7 benefits is appropriate.

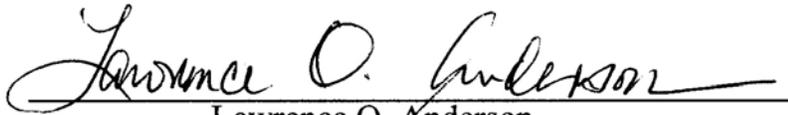
8 **V. CONCLUSION**

9 For the foregoing reasons, the Court finds the ALJ committed legal error when he
10 failed to provide specific and legitimate reasons supported by substantial evidence in the
11 record for rejecting the opinions of Drs. Feldman and Torzala. The Court further finds that
12 based on this error, remand for an award of benefits is warranted.

13 Accordingly,

14 **IT IS ORDERED** that the decision of the Commissioner is **REVERSED** and this
15 case is **REMANDED** to the Social Security Administration for an award of benefits. The
16 Clerk of Court is directed to enter judgment accordingly.

17 Dated this 2nd day of July, 2013.

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20 Lawrence O. Anderson
21 United States Magistrate Judge
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