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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Tamara Demia Jones,

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CIV 15-02528-PHX-MHB

10

Plaintiff,

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**ORDER**

11

vs.

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Commissioner of Social Security)  
Administration,

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Defendant.

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Pending before the Court is Plaintiff Tamara Demia Jones’s appeal from the Social Security Administration’s final decision to deny her claim for disability insurance benefits and supplemental security income. After reviewing the administrative record and the arguments of the parties, the Court now issues the following ruling.

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**I. PROCEDURAL HISTORY**

20

Plaintiff filed applications for disability insurance benefits and supplemental security income alleging disability beginning January 1, 2007 (Transcript of Administrative Record (“Tr.”) at 173-74, 185-90.) Her applications were denied initially and on reconsideration. (Tr. at 72-89, 90-106.) Thereafter, Plaintiff requested a hearing before an administrative law judge. (Tr. at 122-23.) A hearing was held on June 16, 2014, (Tr. at 40-72), and the ALJ issued a decision finding that Plaintiff was not disabled (Tr. at 20-39.) The Appeals Council denied Plaintiff’s request for review (Tr. at 1-6.), making the ALJ’s decision the final decision of the Commissioner. Plaintiff then sought judicial review of the ALJ’s decision pursuant to 42 U.S.C. § 405(g).

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1 **II. STANDARD OF REVIEW**

2 The Court must affirm the ALJ’s findings if the findings are supported by substantial  
3 evidence and are free from reversible legal error. See Reddick v. Chater, 157 F.3d 715, 720  
4 (9<sup>th</sup> Cir. 1998); Marcia v. Sullivan, 900 F.2d 172, 174 (9<sup>th</sup> Cir. 1990). Substantial evidence  
5 means “more than a mere scintilla” and “such relevant evidence as a reasonable mind might  
6 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389, 401  
7 (1971); see Reddick, 157 F.3d at 720.

8 In determining whether substantial evidence supports a decision, the Court considers  
9 the administrative record as a whole, weighing both the evidence that supports and the  
10 evidence that detracts from the ALJ’s conclusion. See Reddick, 157 F.3d at 720. “The ALJ  
11 is responsible for determining credibility, resolving conflicts in medical testimony, and for  
12 resolving ambiguities.” Andrews v. Shalala, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir. 1995); see  
13 Magallanes v. Bowen, 881 F.2d 747, 750 (9<sup>th</sup> Cir. 1989). “If the evidence can reasonably  
14 support either affirming or reversing the [Commissioner’s] conclusion, the court may not  
15 substitute its judgment for that of the [Commissioner].” Reddick, 157 F.3d at 720-21.

16 **III. THE ALJ’S FINDINGS**

17 In order to be eligible for disability or social security benefits, a claimant must  
18 demonstrate an “inability to engage in any substantial gainful activity by reason of any  
19 medically determinable physical or mental impairment which can be expected to result in  
20 death or which has lasted or can be expected to last for a continuous period of not less than  
21 12 months.” 42 U.S.C. § 423(d)(1)(A). An ALJ determines a claimant’s eligibility for  
22 benefits by following a five-step sequential evaluation:

- 23 (1) determine whether the applicant is engaged in “substantial gainful activity”;
- 24 (2) determine whether the applicant has a medically severe impairment or  
25 combination of impairments;
- 26 (3) determine whether the applicant’s impairment equals one of a number of listed  
27 impairments that the Commissioner acknowledges as so severe as to preclude the  
28 applicant from engaging in substantial gainful activity;

1 (4) if the applicant's impairment does not equal one of the listed impairments,  
2 determine whether the applicant is capable of performing his or her past relevant  
work;

3 (5) if the applicant is not capable of performing his or her past relevant work,  
4 determine whether the applicant is able to perform other work in the national  
economy in view of his age, education, and work experience.

5 See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987) (citing 20 C.F.R. §§ 404.1520,  
6 416.920). At the fifth stage, the burden of proof shifts to the Commissioner to show that the  
7 claimant can perform other substantial gainful work. See Penny v. Sullivan, 2 F.3d 953, 956  
8 (9<sup>th</sup> Cir. 1993).

9 At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful  
10 activity since January 1, 2007 – the alleged onset date. (Tr. at 25.) At step two, she found  
11 that Plaintiff had the following severe impairments: diabetes mellitus; asthma; peripheral  
12 neuropathy of lower extremities; mild degenerative disc disease of the cervical spine; mild  
13 sclerosis of the lumbar spine; obesity; affective disorder; anxiety disorder and purported  
14 dyslexia. (Tr. at 25.) At step three, the ALJ stated that Plaintiff did not have an impairment  
15 or combination of impairments that met or medically equaled an impairment listed in 20  
16 C.F.R. Part 404, Subpart P, Appendix 1 of the Commissioner's regulations. (Tr. at 26.)  
17 After consideration of the entire record, the ALJ found that Plaintiff retained "the residual  
18 functional capacity to perform less than a full range of sedentary work as defined 20 CFR  
19 404.1567(a) and 416.967(a). The claimant can lift and carry ten pounds occasionally and ten  
20 pounds frequently. She can stand and/or walk two hours out of an eight-hour workday. She  
21 can sit six hours out of an eight-hour workday. She must use a cane as needed. She can  
22 frequently climb stairs, but is precluded from climbing ladders, ropes or scaffolds. She is  
23 precluded from balancing. She can frequently stoop and crouch. She is precluded from  
24 kneeling and crawling. She is precluded from overhead work with the right upper extremity.  
25 She can frequently perform gross manipulation with right upper extremity. She must avoid  
26 concentrated exposure to fumes, odors, dust and other pulmonary irritants. She is limited to  
27 simple routine tasks and only non-intense interaction with the public and co-workers. She is  
28 precluded from jobs requiring teamwork and hypervigilance. She cannot be responsible for

1 the safety of others. She is limited to only low stress jobs, which are defined as having only  
2 occasional changes in the work setting and work-related decisions. She is limited to jobs  
3 requiring only basic reading levels.” (Tr. at 26-27.) The ALJ determined that Plaintiff was  
4 unable to perform any past relevant work. (Tr. at 33.) The ALJ concluded that Plaintiff has  
5 not been under a disability from January 1, 2007, through the date of her decision. (Tr. at 35.)

#### 6 IV. DISCUSSION

7 In her brief, Plaintiff contends that the ALJ erred by failing to properly weigh medical  
8 source opinion evidence; Plaintiff claims that neither (A) the physical RFC<sup>1</sup> nor (B) the  
9 mental RFC are supported by substantial evidence.

10 “The ALJ is responsible for resolving conflicts in the medical record.” Carmickle v.  
11 Comm’r, Soc. Sec. Admin., 533 F.3d at 1164. Such conflicts may arise between a treating  
12 physician’s medical opinion and other evidence in the claimant’s record. In weighing  
13 medical source opinions in Social Security cases, the Ninth Circuit distinguishes among three  
14 types of physicians: (1) treating physicians, who actually treat the claimant; (2) examining  
15 physicians, who examine but do not treat the claimant; and (3) non-examining physicians,  
16 who neither treat nor examine the claimant. See Lester v. Chater, 81 F.3d 821, 830 (9<sup>th</sup> Cir.  
17 1995). The Ninth Circuit has held that a treating physician’s opinion is entitled to  
18 “substantial weight.” Bray v. Comm’r, Soc. Sec. Admin., 554 F.3d 1219, 1228 (9<sup>th</sup> Cir.  
19 2009) (quoting Embrey v. Bowen, 849 F.2d 418, 422 (9<sup>th</sup> Cir. 1988)). A treating physician’s  
20 opinion is given controlling weight when it is “well-supported by medically accepted clinical  
21 and laboratory diagnostic techniques and is not inconsistent with the other substantial  
22 evidence in [the claimant’s] case record.” 20 C.F.R. § 404.1527(d)(2). On the other hand,  
23 if a treating physician’s opinion “is not well-supported” or “is inconsistent with other  
24 substantial evidence in the record,” then it should not be given controlling weight. Orn v.  
25 Astrue, 495 F.3d 624, 631 (9<sup>th</sup> Cir. 2007).

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27 <sup>1</sup> “Residual functional capacity” is defined as the most a claimant can do after  
28 considering the effects of physical and/or mental limitations that affect the ability to perform  
work-related tasks.

1           If a treating physician’s opinion is not contradicted by the opinion of another  
2 physician, then the ALJ may discount the treating physician’s opinion only for “clear and  
3 convincing” reasons. See Carmickle, 533 F.3d at 1164 (quoting Lester, 81 F.3d at 830). If  
4 a treating physician’s opinion is contradicted by another physician’s opinion, then the ALJ  
5 may reject the treating physician’s opinion if there are “specific and legitimate reasons that  
6 are supported by substantial evidence in the record.” Id. (quoting Lester, 81 F.3d at 830).

7           Plaintiff contends that the ALJ erred by failing to properly weigh medical source  
8 opinion evidence. Specifically, Plaintiff argues that the ALJ improperly rejected the opinion  
9 of treating physician, Edward Sayegh, M.D., relying instead upon the opinions from state  
10 agency doctors who completed assessment forms as part of the initial and reconsideration  
11 determinations that were based on limited record reviews.

12           Since the opinion of Dr. Sayegh was contradicted by consultative and reviewing  
13 doctors’ opinions, as well as other objective medical evidence, the specific and legitimate  
14 standard applies.

15           Historically, the courts have recognized the following as specific, legitimate reasons  
16 for disregarding a treating or examining physician’s opinion: conflicting medical evidence;  
17 the absence of regular medical treatment during the alleged period of disability; the lack of  
18 medical support for doctors’ reports based substantially on a claimant’s subjective complaints  
19 of pain; and medical opinions that are brief, conclusory, and inadequately supported by  
20 medical evidence. See, e.g., Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9<sup>th</sup> Cir. 2005); Flaten  
21 v. Secretary of Health and Human Servs., 44 F.3d 1453, 1463-64 (9<sup>th</sup> Cir. 1995); Fair v.  
22 Bowen, 885 F.2d 597, 604 (9<sup>th</sup> Cir. 1989).

23           The ALJ considered the following objective medical evidence of Plaintiff’s  
24 impairments in her determination of Plaintiff’s RFC assessment.

25           In November 2012, consultative examiner Angel Gomez, M.D. examined the Plaintiff  
26 (Tr. 319-27.) He noted that Plaintiff was obese but overall appeared to perform well. Plaintiff  
27 appeared to be slightly weaker in the right upper and right lower extremities. Dr. Gomez  
28 diagnosed asthma and diabetic neuropathy. Dr Gomez completed an opinion of Plaintiff’s

1 work-related activities in which he opined that Plaintiff could lift or carry 20 pounds  
2 occasionally and frequently; stand and walk at least two hours but less than six hours per  
3 eight-hour workday; frequently able to kneel, crouch, crawl and feel with the right hand;  
4 occasionally stoop, and kneel; no limitations on climbing, reaching, handling and ability to  
5 finger. He also noted Plaintiff's minimal to no limp with use of a cane for balance. (Tr. 319-  
6 27.)

7           Also in November 2012, state agency physician Stephen A. Whaley, M.D., reviewed  
8 Plaintiff's medical record and submitted a Physical RFC Assessment form. Dr. Whaley  
9 opined that Plaintiff could lift and carry 20 pounds occasionally and 10 pounds frequently;  
10 stand and walk six hours per eight-hour work day; had no limitations pushing or pulling with  
11 hands or feet; should avoid concentrated exposure to extreme cold, extreme heat, wetness,  
12 humidity, fumes, odors, dusts, gases, poor ventilation; and should limit exposure to  
13 environmental conditions which exacerbate respiratory symptoms. (Tr. at 81-83.)  
14 Furthermore, state agency physician Donald Robins, M.D., also reviewed Plaintiff's medical  
15 records. Dr. Robins opined that Plaintiff could lift and carry twenty pounds occasionally and,  
16 lift and carry ten pounds frequently; stand and walk about four hours in an eight-hour work  
17 day; sit about six hours in an eight-hour workday; and must avoid concentrated exposure to  
18 extreme cold, extreme heat, wetness, humidity, fumes, odors, dusts, gases, poor ventilation.  
19 (Tr. at 101-03.) Additionally, state agency physician Arvin Klein, M.D., reviewed the  
20 claimant's medical records and testified at the hearing. Dr. Klein opined that Plaintiff could  
21 lift and carry ten pounds occasionally and, lift and carry ten pounds frequently; can stand and  
22 walk up to six hours in an eight-hour workday; can sit up to six hours in an eight-hour  
23 workday; is precluded from balancing and climbing ladders, ropes and scaffolds; is precluded  
24 from performing overhead reaching the right upper extremity; can frequently perform gross  
25 manipulation with the right upper extremity; and is precluded from working around  
26 solvents, fumes, dusts, heights and heavy machinery. (Tr. at 40-72.)

27           Lastly, in March 2013, treating physician Edward Sayegh, M.D., submitted a medical  
28 source statement regarding Plaintiff's abilities. Dr. Sayegh opined that Plaintiff could sit one

1 hour; stand and walk one hour; lift and carry less than ten pounds; has limitations in doing  
2 repetitive reaching, handling and fingering with her right arms, hands and fingers; is limited  
3 to less than a full range of sedentary exertion and would miss more than four workdays a  
4 month. Dr. Sayegh concluded that Plaintiff was not physically capable of working an eight  
5 hour day for five days a week on a sustained basis. (Tr. at 343-44.)

6 In her evaluation of the objective medical evidence, the ALJ addressed state agency  
7 physician Dr. Gomez's opinion that Plaintiff's ability to finger with her right hand. (Tr. 319-27.) The  
8 ALJ gave reduced weight because it was inconsistent with nerve conduction studies showing only  
9 mild peripheral neuropathy in upper extremities, as well as Plaintiff's testimony that she has normal  
10 use and feeling in her hand. (Tr. at 32.) However, the ALJ gave significant weight to Dr. Gomez's  
11 remaining opinion because it is generally consistent with the medical record as a whole. (Tr. at 32);  
12 see 20 C.F.R. § 416.927(d)(2)(i) (state agency medical consultants "are highly qualified  
13 physicians, psychologists, and other medical specialists who are also experts in Social  
14 Security disability evaluation"); Thomas v. Barnhart, 278 F.3d 947, 957 (9<sup>th</sup> Cir. 2002) ("The  
15 opinions of non treating or non examining physicians may also serve as substantial evidence  
16 when the opinions are consistent with independent clinical findings or other evidence in the  
17 record." (citations omitted)).

18 The ALJ also considered the opinions from Dr. Whaley and Dr. Robbins. (Tr. at 32.)  
19 Dr. Robbins largely agreed with Dr. Whaley's opinion. The ALJ gave reduced weight to their  
20 opinions regarding the Plaintiff's ability to work around extreme temperatures and wetness  
21 because the Plaintiff's diabetes mellitus is under good control. However, the ALJ gave  
22 significant weight to their remaining opinions because they are consistent with Plaintiff's  
23 positive response to conservative care and clinical examinations documenting normal gait  
24 and good strength.(Tr. at 32.) Additionally, the ALJ gave great weight to Dr. Klein's opinion  
25 because it is consistent with the medical record as a whole, including Plaintiff's positive  
26 response to conservative care, the mild x-ray studies of her spine, generally mild peripheral  
27 neuropathy and clinical examinations documenting normal gait, full range of motion of her  
28 right shoulder and occasional right shoulder pain. (Tr. at 33.)

1           The ALJ then discussed treating physician Dr. Sayegh’s opinion that the Plaintiff is  
2 limited to less than a full range of sedentary exertion and would miss more than four  
3 workdays per month. (Tr. at 32.) The ALJ discounted the opinion because it was overly  
4 restrictive given Plaintiff’s positive response to conservative treatment and clinical  
5 examination documenting mild neuropathic symptoms, normal gait and generally full  
6 strength. (Tr. at 32.)

7           The Court finds that the ALJ properly weighed the medical source opinion evidence  
8 related to Plaintiff’s physical impairments, and gave specific and legitimate reasons, based  
9 on substantial evidence in the record, for discounting Dr. Sayegh’s opinion. See Molina v.  
10 Astrue, 674 F.3d 1104, 1111 (9<sup>th</sup> Cir. 2012) (“In order to reject the testimony of a medically  
11 acceptable treating source, the ALJ must provide specific, legitimate reasons based on  
12 substantial evidence in the record.” (citation omitted)). An ALJ provides specific and  
13 legitimate reasons to discount a treating physician’s opinion when she expressly relies on the  
14 contrary opinions of an examining physician. See Tonapetyan v. Halter, 242 F.3d 1144, 1149  
15 (9<sup>th</sup> Cir. 2001). Here, the ALJ gave significant weigh to the majority of Dr. Gomez’s opinion  
16 that Plaintiff could perform the demands of sedentary work, with certain postural and  
17 environmental limitations. (Tr. at 32; 322-24.) The opinion of Dr. Gomez is substantial  
18 evidence for the RFC assessment and the rejection of the treating physician’s opinion. Id.  
19 Furthermore, an ALJ may discount a treating physician’s opinion because it is unsupported  
20 by treatment notes and conflicts with examination results and Plaintiff’s positive response  
21 to treatment. Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 599, 601-03 (9<sup>th</sup> Cir. 1999).  
22 The ALJ explained with citations to the record that Plaintiff’s treatment has been routine,  
23 without spinal injections or surgery, that her asthma, diabetes and right shoulder have been  
24 controlled with medication, and that objective medical evidence is inconsistent with the  
25 treating physicians’s assessment of extreme limitations. (Tr. at 31.) An X-ray of Plaintiff’s  
26 spine shows mild and minimal changes (Tr. at 406-07.) A nerve conduction study showed  
27 mild and moderate abnormalities. (Tr. at 395-98.). Dr. Gomez’s exam revealed normal  
28 muscle tone, full range of motion in all extremities, slight weakness in the right extremities,

1 full sensory findings, and normal spirometry. (Tr. at 321.) The evidence the ALJ relied upon  
2 was substantial, and therefore, the Court finds no error.

3 Plaintiff next contends that the mental RFC is not supported by substantial evidence  
4 because the ALJ erred in rejecting the opinion from consultative examiner Robin Potter, Psy.  
5 D.

6 In November 2012, Dr. Potter examined Plaintiff. (Tr. at 328-42.) Dr. Potter observed  
7 Plaintiff in a depressed manner, and observed that Plaintiff needed reminders to take her  
8 medication, needed transportation assistance, and had been in special education in school.  
9 Additionally, Dr. Potter noted that Plaintiff was quiet, not a good historian, presented at times  
10 as immature by rolling her eyes during the exam, appeared hesitant, and had to reposition and  
11 move around during the exam. Dr. Potter found that Plaintiff exhibited symptoms of  
12 depression and anxiety. Plaintiff's symptoms of depression included depressed mood most  
13 days for several years, hypersomnia, decreased appetite, diminished interest in previously  
14 enjoyable activities, and passive suicidal ideation. There was no current suicidal intent or  
15 plan. Plaintiff's anxiety symptoms included constant worry and rumination. However,  
16 anxiety did not seem to meet criteria for diagnosis based on Plaintiff's reporting. The results  
17 of the MMSE revealed no gross cognitive impairments such as delirium or dementia. The  
18 results of the WAIS-IV revealed that Plaintiff's overall intelligence quotient is in the  
19 extremely low range. Based on Plaintiff's varied level of effort and motivation, Dr. Potter  
20 stated that the results should be viewed with caution. Plaintiff did not appear to meet the  
21 criteria for Mild Mental Retardation based on her daily living skills. According to Dr. Potter,  
22 examination of Plaintiff's previous school records could shed light on whether Plaintiff has  
23 exhibited cognitive problems over time. In light of the evidence Dr. Potter concluded that a  
24 diagnosis of borderline intellectual functioning appeared appropriate. (Tr. at 328-42.)

25 Dr. Potter also completed a medical assessment of Plaintiff's ability to perform  
26 work-related activities. (Tr. at 340-41.) Dr. Potter opined that Plaintiff's difficulty with  
27 comprehension and processing speed appeared likely to interfere with Plaintiff's ability to  
28 follow instructions in a work environment. Additionally, Plaintiff exhibited issues with

1 sustained concentration and persistence which would likely impact Plaintiff's attention and  
2 concentration at work and ability to maintain regular attendance. Furthermore, Plaintiff had  
3 limitations with social interaction that would likely interfere in a work like setting. Lastly,  
4 Dr. Potter opined Plaintiff's difficulty adapting to changes and difficulty with interpersonal  
5 relationships are likely to interfere with her ability to maintain employment. (Tr. at 340-41.)

6 The ALJ discussed Dr. Potter's opinion that Plaintiff would have difficulty following  
7 instructions in a work environment; moderate difficulty carrying out even simple  
8 instructions; difficulty maintaining attention, concentration and regular attendance at work;  
9 would have social functioning limitations of an unspecified degree; and had poor ability to  
10 adapt, cope or handle changes. (Tr. at 340-41.) The ALJ gave reduced weight to Dr. Potter's  
11 opinion because it was inconsistent with Plaintiff's poor effort during the examination as well  
12 as the Plaintiff's general lack of mental health treatment and unremarkable mental status  
13 examinations during routine office visits. (Tr. at 33.)

14 The Court having reviewed the ALJ's evaluation of the objective medical evidence  
15 finds that the ALJ did not mention the opinions or treatment record of psychological  
16 consultants Alvin Smith, Ph. D., and Stephen Fair, Ph. D. (Tr. at 20-39.) Dr. Potter is the only  
17 source in the record whose opinion the ALJ discussed or weighed. The ALJ did not discuss  
18 or indicate what degree of weight she afforded to the opinions of Dr. Smith (Tr. at 84-85),  
19 and Dr. Fair (Tr. at 104-05). Even if the non-examining opinions support the ALJ's decision,  
20 the ALJ has not provided any explanation whether the evidence supports those opinions  
21 sufficiently for the ALJ to properly rely on them. See Garrison v. Colvin, 795 F.3d 995, 1012  
22 (9<sup>th</sup> Cir. 2014) (noting differences in treatment of opinions from different sources and  
23 indicating that "the opinion of an examining physician is entitled to greater weight than that  
24 of a non-examining physician"); Bain v. Astrue, 319 Fed.Appx. 543, 546 (9<sup>th</sup> Cir.  
25 2009)("Evidence from state agency consultant physicians must be treated as 'expert opinion  
26 evidence;' thus, the ALJ 'may not ignore these opinions and must explain the weight given  
27 to these opinions in their decisions'") (quoting SSR 96-6p). Additionally, the justification for  
28 the rejection that was given by the ALJ was not supported by substantial evidence. Instead,

1 the ALJ gave reduced weight because it was inconsistent with Plaintiff's poor effort during  
2 the examination as well as Plaintiff's general lack of mental health treatment and  
3 unremarkable mental status examinations during routine office visits. (Tr. at 33.) The focus  
4 on Plaintiff's poor effort during the examination ignored evidence to the contrary. An ALJ  
5 is not permitted to rely on evidence supporting her conclusions while ignoring evidence  
6 contrary to those conclusions. See Maydanis v. Colvin, 119 F.Supp.3d 969, 976 (D. Ariz.  
7 2015); Provencio v. Astrue, 2012 U.S. Dist. LEXIS 85294, at \*48 (D. Ariz., June 20, 2012)  
8 (finding "[i]t was improper for the ALJ to selectively reference plaintiff's treatment records  
9 to support her conclusion, while ignoring other treatment records contradicting that  
10 conclusion"). Moreover, the lack of formal mental health treatment cannot serve as evidence  
11 that mental health issues are not disabling. See Rivera v. Colvin, 2013 U.S. Dist. LEXIS  
12 161035, \*9-10 (D. Or., Nov. 12, 2013).

13 Therefore, in light of the fact that the Court finds that the ALJ failed to provide  
14 specific, legitimate reasons based on substantial evidence in the record for giving reduced  
15 weight to Dr. Potter's opinion, the Court will order that the decision of the ALJ be vacated  
16 and the case be remanded.

17 "[R]emand for further proceedings is appropriate where there are outstanding issues  
18 that must be resolved before a determination can be made, and it is not clear from the record  
19 that the ALJ would be required to find claimant disabled if all the evidence were properly  
20 evaluated." Hill v. Astrue, 698 F.3d 1153, 1162 (9<sup>th</sup> Cir. 2012) (citing Vasquez v. Astrue,  
21 572 F.3d 586, 593 (9<sup>th</sup> Cir. 2009)). "[T]he proper course, except in rare circumstances, is  
22 remand to the agency for additional investigation or explanation." INS v. Ventura, 537 U.S.  
23 12, 16 (2002) (per curiam). The Ninth Circuit has held that when "additional proceedings  
24 can remedy defects in the original administrative proceeding, a social security case should  
25 be remanded." Marcia v. Sullivan, 900 F.2d 172, 176 (9<sup>th</sup> Cir. 1990) (remanding "to the  
26 Secretary for proper consideration of step three equivalence").

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1 **V. CONCLUSION**

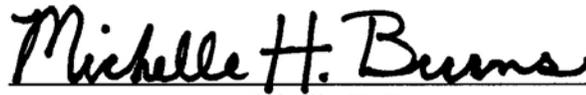
2 For the reasons discussed in this Order, the Commissioner’s decision will be vacated  
3 and this matter will be remanded for further administrative proceedings consistent with this  
4 Order.

5 Accordingly,

6 **IT IS ORDERED** that the Commissioner’s decision is **VACATED** and this matter  
7 is **REMANDED** to the Commissioner for further administrative proceedings as set forth in  
8 this Order;

9 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter judgment  
10 accordingly.

11 DATED this 24th day of March, 2017.

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14 Michelle H. Burns  
15 United States Magistrate Judge  
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