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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Veronica Castro,

Plaintiff,

v.

Acting Commissioner of the Social Security
Administration,

Defendant.

No. CV-17-03633-PHX-ESW

ORDER

Pending before the Court is Plaintiff Veronica Castro’s (“Plaintiff”) appeal of the Social Security Administration’s (“Social Security”) denial of her applications for supplemental security income and surviving child’s insurance benefits. The Court has jurisdiction to decide Plaintiff’s appeal pursuant to 42 U.S.C. §§ 405(g), 1383(c). Under 42 U.S.C. § 405(g), the Court has the power to enter, based upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the case for a rehearing. Both parties have consented to the exercise of U.S. Magistrate Judge jurisdiction. (Doc. 13).

After reviewing the Administrative Record (“A.R.”) and the parties’ briefing (Docs. 19, 23, 24), the Court finds that the Administrative Law Judge’s (“ALJ”) decision

1 contains harmful legal error. For the reasons explained in Section II below, the decision
2 is reversed and the case is remanded to the Commissioner of Social Security for an
3 immediate award of benefits effective October 1, 2010 (the disability onset date).

4 **I. LEGAL STANDARDS**

5 **A. Disability Analysis: Five-Step Evaluation**

6 The Social Security Act provides for supplemental security income to certain
7 individuals who are aged 65 or older, blind, or disabled and have limited income. 42
8 U.S.C. § 1382. To be eligible for benefits based on an alleged disability, the claimant
9 must show that he or she suffers from a medically determinable physical or mental
10 impairment that prohibits him or her from engaging in any substantial gainful activity.
11 42 U.S.C. § 423(d)(1)(A); 42 U.S.C. § 1382c(A)(3)(A). The claimant must also show
12 that the impairment is expected to cause death or last for a continuous period of at least
13 12 months. *Id.*

14 The Social Security Act also provides disabled child's insurance benefits based on
15 the earnings record of an insured person who is entitled to old-age or disability benefits
16 or has died. 42 U.S.C. § 402(d); 20 C.F.R. § 404.350(a). The same definition of
17 "disability" and five-step sequential evaluation outlined below governs eligibility for
18 disabled child's insurance benefits. *See* 42 U.S.C. § 423(d); 20 C.F.R. § 404.1520(a)(1)-
19 (2). In addition, in order to qualify for disabled child's insurance benefits several criteria
20 must be met. 20 C.F.R. §§ 404.350(a)(1)-(5). For instance, if the claimant is over 18, the
21 claimant must "have a disability that began before [she] became 22 years old." 20 C.F.R.
22 §§ 404.350(a)(5).

23 To decide if a claimant is entitled to Social Security disability benefits, an ALJ
24 conducts an analysis consisting of five questions, which are considered in sequential
25 steps. 20 C.F.R. §§ 404.1520(a), 416.920(a). The claimant has the burden of proof
26 regarding the first four steps:¹

27
28 ¹ *Parra v. Astrue*, 481 F.3d 742,746 (9th Cir. 2007).

1 **Step One:** Is the claimant engaged in “substantial gainful
2 activity”? If so, the analysis ends and disability benefits are
3 denied. Otherwise, the ALJ proceeds to step two.

4 **Step Two:** Does the claimant have a medically severe
5 impairment or combination of impairments? A severe
6 impairment is one which significantly limits the claimant’s
7 physical or mental ability to do basic work activities. 20
8 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does not
9 have a severe impairment or combination of impairments,
10 disability benefits are denied at this step. Otherwise, the ALJ
11 proceeds to step three.

12 **Step Three:** Is the impairment equivalent to one of a number
13 of listed impairments that the Commissioner acknowledges
14 are so severe as to preclude substantial gainful activity? 20
15 C.F.R. §§ 404.1520(d), 416.920(d). If the impairment meets
16 or equals one of the listed impairments, the claimant is
17 conclusively presumed to be disabled. If the impairment is
18 not one that is presumed to be disabling, the ALJ proceeds to
19 the fourth step of the analysis.

20 **Step Four:** Does the impairment prevent the claimant from
21 performing work which the claimant performed in the past?
22 If not, the claimant is “not disabled” and disability benefits
23 are denied without continuing the analysis. 20 C.F.R. §§
24 404.1520(f), 416.920(f). Otherwise, the ALJ proceeds to the
25 last step.

26 If the analysis proceeds to the final question, the burden of proof shifts to the
27 Commissioner:²

28 **Step Five:** Can the claimant perform other work in the
national economy in light of his or her age, education, and
work experience? The claimant is entitled to disability
benefits only if he or she is unable to perform other work. 20
C.F.R. §§ 404.1520(g), 416.920(g). Social Security is
responsible for providing evidence that demonstrates that

² *Parra*, 481 F.3d at 746.

1 other work exists in significant numbers in the national
2 economy that the claimant can do, given the claimant's
3 residual functional capacity, age, education, and work
experience. *Id.*

4 **B. Standard of Review Applicable to ALJ's Determination**

5 The Court must affirm an ALJ's decision if it is supported by substantial evidence
6 and is based on correct legal standards. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir.
7 2012); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). Although "substantial
8 evidence" is less than a preponderance, it is more than a "mere scintilla." *Richardson v.*
9 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison v. NLRB*, 305 U.S. 197,
10 229 (1938)). It means such relevant evidence as a reasonable mind might accept as
11 adequate to support a conclusion. *Id.*

12 In determining whether substantial evidence supports the ALJ's decision, the
13 Court considers the record as a whole, weighing both the evidence that supports and
14 detracts from the ALJ's conclusions. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir.
15 1998); *Tylitzki v. Shalala*, 999 F.2d 1411, 1413 (9th Cir. 1993). If there is sufficient
16 evidence to support the ALJ's determination, the Court cannot substitute its own
17 determination. *See Morgan v. Comm'r of the Social Sec. Admin.*, 169 F.3d 595, 599 (9th
18 Cir. 1999) ("Where the evidence is susceptible to more than one rational interpretation, it
19 is the ALJ's conclusion that must be upheld."); *Magallanes v. Bowen*, 881 F.2d 747, 750
20 (9th Cir. 1989). This is because the ALJ, not the Court, is responsible for resolving
21 conflicts and ambiguities in the evidence and determining credibility. *Magallanes*, 881
22 F.2d at 750; *see also Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

23 The Court also considers the harmless error doctrine when reviewing an ALJ's
24 decision. This doctrine provides that an ALJ's decision need not be remanded or
25 reversed if it is clear from the record that the error is "inconsequential to the ultimate
26 nondisability determination." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)
27 (citations omitted); *Molina*, 674 F.3d at 1115 (an error is harmless so long as there
28

1 remains substantial evidence supporting the ALJ's decision and the error "does not
2 negate the validity of the ALJ's ultimate conclusion") (citations omitted).

3 4 **II. PLAINTIFF'S APPEAL**

5 **A. Procedural Background**

6 Plaintiff, who was born in 1989, has no past relevant work. (A.R. 27). In 2013,
7 Plaintiff filed applications for supplemental security income and surviving child's
8 insurance benefits. (A.R. 295-308). Plaintiff's applications alleged that on April 21,
9 2008, Plaintiff became unable to work due to interstitial cystitis/inflammation of the
10 bladder, chronic abdominal and pelvic pain, anxiety disorder, nausea, muscle spasms in
11 back, high blood pressure, acid reflux, and polycystic ovarian syndrome. (A.R. 78, 92).
12 Social Security denied the applications in May 2013. (A.R. 177-85). In September 2013,
13 upon Plaintiff's request for reconsideration, Social Security affirmed the denial of
14 benefits. (A.R. 189-94). Plaintiff sought further review by an ALJ, who conducted a
15 hearing on August 5, 2014. (A.R. 61-77). In a November 24, 2014 decision, the ALJ
16 found that Plaintiff is not disabled within the meaning of the Social Security Act. (A.R.
17 143-68). The Appeals Council granted Plaintiff's request for review, vacated the ALJ's
18 decision, and remanded the case to the ALJ for further proceedings. (A.R. 168-73).

19 On remand, the ALJ held a second administrative hearing on November 8, 2016.
20 (A.R. 61-77). On March 13, 2017, the ALJ issued a decision finding that Plaintiff was
21 not disabled within the meaning of the Social Security Act. (A.R. 15-28). The Appeals
22 Council denied Plaintiff's request for review, making the ALJ's decision the final
23 decision of the Social Security Commissioner. (A.R. 1-6). On October 10, 2017,
24 Plaintiff filed a Complaint (Doc. 1) requesting judicial review and reversal of the ALJ's
25 decision.

1 **B. The ALJ’s Application of the Five-Step Disability Analysis**

2 The ALJ completed all five steps of the disability analysis before finding that
3 Plaintiff is not disabled and entitled to disability benefits.

4 **1. Step One: Engagement in “Substantial Gainful Activity”**

5 The ALJ determined that Plaintiff has not engaged in substantial gainful activity
6 since October 1, 2010, the amended alleged onset disability date. (A.R. 18). Neither
7 party disputes this determination.

8 **2. Step Two: Presence of Medically Severe Impairment/Combination
9 of Impairments**

10 The ALJ found that Plaintiff has the following severe impairments: (i) pelvic floor
11 dysfunction; (ii) interstitial cystitis; (iii) degenerative disc disease of the lumbar spine;
12 (iv) migraines; (v) obesity; (vi) history of asthma; (vii) history of polycystic ovarian
13 disease; (viii) migraine headaches vs. occipital neuralgia; and (ix) adjustment disorder
14 with depressed and anxious moods. (A.R. 18). The ALJ’s step two determination is
15 undisputed.

16 **3. Step Three: Presence of Listed Impairment(s)**

17 The ALJ determined that Plaintiff does not have an impairment or combination of
18 impairments that meets or medically equals an impairment listed in 20 C.F.R. Part 404,
19 Subpart P, Appendix 1 of the Social Security regulations. (A.R. 18-21). Neither party
20 disputes the ALJ’s determination at this step.

21 **4. Steps Four and Five: Capacity to Perform Work**

22 The ALJ found that Plaintiff retained the residual functional capacity (“RFC”) to
23 perform the sedentary work as defined in 20 C.F.R. §§ 404.1567(a) and 416.967(a),
24 subject to a number of limitations. (A.R. 20). For instance, the ALJ determined that
25 Plaintiff “should not work in a setting that includes constant regular contact with the
26 public or more than infrequent handling of customer complaints.” (*Id.*).

27 As Plaintiff has no past relevant work, the ALJ proceeded to Step Five and
28 determined whether Plaintiff could perform any work existing in significant numbers in

1 the national economy. (A.R. 27). Based on the assessed RFC and the testimony of the
2 Vocational Expert (“VE”), the ALJ concluded that Plaintiff is capable of performing the
3 requirements of representative occupations such as addressor, document preparer, and
4 table worker. (A.R. 28). Plaintiff disputes this determination, asserting that the ALJ
5 improperly weighed the opinions of her treating physicians and improperly discredited
6 her subjective complaints.

7 **C. The ALJ Failed to Give Specific and Legitimate Reasons for Discounting**
8 **Drs. Stacia Kagie and Castellanos’ Opinions**

9 In weighing medical source opinions in Social Security cases, there are three
10 categories of physicians: (i) treating physicians, who actually treat the claimant; (ii)
11 examining physicians, who examine but do not treat the claimant; and (iii) non-
12 examining physicians, who neither treat nor examine the claimant. *Lester v. Chater*, 81
13 F.3d 821, 830 (9th Cir. 1995). An ALJ must provide clear and convincing reasons that
14 are supported by substantial evidence for rejecting the uncontradicted opinion of a
15 treating or examining doctor. *Id.* at 830-31; *Bayliss v. Barnhart*, 427 F.3d 1211, 1216
16 (9th Cir. 2005). An ALJ cannot reject a treating or examining physician’s opinion in
17 favor of another physician’s opinion without first providing specific and legitimate
18 reasons that are supported by substantial evidence, such as finding that the physician’s
19 opinion is inconsistent with and not supported by the record as a whole. *Bayliss*, 427
20 F.3d at 1216; 20 C.F.R. § 404.1527(c)(4) (an ALJ must consider whether an opinion is
21 consistent with the record as a whole); *see also Batson v. Comm’r of Soc. Sec. Admin.*,
22 359 F.3d 1190, 1195 (9th Cir. 2004); *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.
23 2002); *Tommasetti*, 533 F.3d at 1041 (finding it not improper for an ALJ to reject a
24 treating physician’s opinion that is inconsistent with the record).

25 Plaintiff’s treating physicians Stacia Kagie, D.O. and Mario Castellanos, M.D.
26 completed Medical Assessments in 2013, 2014, and 2016. (A.R. 1277-78, 1530-31,
27 1653-56, 1657-60, 2094-95, 2191-94). Drs. Kagie and Castellanos stated that Plaintiff
28 has a number of symptoms resulting from her medically determinable impairments, such

1 as pelvic and low back pain, bodyaches, and fatigue (A.R. 1659, 2193). In July 2014,
2 Dr. Castellanos opined that Plaintiff can sit for two hours in an eight-hour workday, can
3 stand/walk less than two hours in an eight-hour workday, and can lift/carry less than ten
4 pounds. (A.R. 1657). In November 2016, Dr. Kagie opined that Plaintiff had these same
5 limitations, except that Dr. Kagie opined that Plaintiff can sit for less than two hours in an
6 eight-hour workday. (A.R. 2191). The parties agree that the ALJ could not reject Drs.
7 Kagie and Castellanos' opinions without first providing specific and legitimate reasons
8 supported by substantial evidence in the record.

9 In a single paragraph, the ALJ explained that he gave Drs. Kagie and Castellanos'
10 opinions little weight. (A.R. 26). The ALJ first stated that the opinions
11 are not supported by objective evidence and are inconsistent
12 with the record as a whole. These doctors primarily
13 summarized in the treatment notes the claimant's subjective
14 complaints, diagnoses, and treatment, but they did not provide
15 objective clinical or diagnostic findings to support the
16 functional assessments. These opinions are inconsistent with
17 the objective findings already discussed above in this decision
18 which show improvement with treatment.

19 (*Id.*).

20 The Ninth Circuit has explained that “the treating physician’s opinion as to the
21 combined impact of the claimant’s limitations—both physical and mental—is entitled to
22 special weight.” *Lester*, 81 F.3d at 833. “The treating physician’s continuing
23 relationship with the claimant makes him especially qualified to evaluate reports from
24 examining doctors, to integrate the medical information they provide, and to form an
25 overall conclusion as to functional capacities and limitations, as well as to prescribe or
26 approve the overall course of treatment.” *Id.* An ALJ is “not entitled to reject the
27 responses of a treating physician without specific and legitimate reasons for doing so,
28 even where those responses were provided on a ‘check-the-box’ form, were not
accompanied by comments, and did not indicate to the ALJ the basis for the physician’s
answers.” *Trevizo v. Berryhill*, 871 F.3d 664, 677 n.4 (9th Cir. 2017) (stating that “there

1 is no authority that a ‘check-the-box’ form is any less reliable than any other type of
2 form; indeed, agency physicians routinely use these types of forms to assess the intensity,
3 persistence, or limiting effects of impairments”).

4 Each of the Medical Assessments completed by Drs. Kagie and Castellanos’
5 indicate that the opined limitations could “reasonably be expected to result from
6 [documented] objective clinical or diagnostic findings[.]” (A.R. 1278, 1531, 1654, 1660,
7 2095, 2192, 2194). The Court finds that the ALJ’s first reason for discounting Drs. Kagie
8 and Castellanos’ opinions is not sufficiently specific. *See Garrison*, 759 F.3d at 1013
9 (finding that an ALJ committed “a variety of egregious and important errors,” including
10 failing “to recognize that the opinions expressed in check-box form in the February 2008
11 RFC Questionnaire were based on significant experience with Garrison and supported by
12 numerous records, and were therefore entitled to weight that an otherwise unsupported
13 and unexplained check-box form would not merit”); *Brown-Hunter v. Colvin*, 806 F.3d
14 487, 495 (9th Cir. 2015) (“we cannot substitute our conclusions for the ALJ’s, or
15 speculate as to the grounds for the ALJ’s conclusions. Although the ALJ’s analysis need
16 not be extensive, the ALJ must provide some reasoning in order for [the court] to
17 meaningfully determine whether the ALJ’s conclusions were supported by substantial
18 evidence”) (quoting *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d 1090, 1103 (9th Cir.
19 2014)).

20 As another reason for discounting Drs. Kagie and Castellanos’ opinions, the ALJ
21 found that the “opinions are also inconsistent with the claimant’s admitted activities of
22 daily living that have already been described above in this decision.” (A.R. 26).
23 “[D]isability claimants should not be penalized for attempting to lead normal lives in the
24 face of their limitations.” *Reddick*, 157 F.3d at 722. The ALJ’s decision does not
25 adequately explain how Plaintiff’s daily activities translate to the ability to sustain
26 competitive employment on a full-time basis. *See Garrison v. Colvin*, 759 F.3d 995,
27 1016 (9th Cir. 2014) (stating that the Ninth Circuit has “repeatedly warned that ALJs
28 must be especially cautious in concluding that daily activities are inconsistent with

1 testimony about pain, because impairments that would unquestionably preclude work and
2 all the pressures of a workplace environment will often be consistent with doing more
3 than merely resting in bed all day”).

4 Finally, the ALJ stated that “[b]oth physicians rendered limitations based in part on
5 psychological conditions when they were unqualified to do so.” (A.R. 26). While the
6 opinions of a specialist about medical issues related to his or her area of specialization are
7 given more weight than the opinions of a non-specialist, the ALJ improperly discounted
8 Drs. Kagie and Castellanos’ opinions on the basis that they are not mental health
9 specialists. *See Lester*, 81 F.3d at 833 (ALJ may not disregard a doctor’s opinion as to
10 claimant’s mental functioning for the reason that the doctor is not a mental health
11 specialist); *Kennelly v. Astrue*, 313 F. App’x 977, 978 (9th Cir. 2009) (ALJ could not
12 discount doctor’s testimony regarding claimant’s mental impairments solely because the
13 doctor was not a mental health specialist).

14 For the above reasons, the Court finds that the ALJ discounted Drs. Kagie and
15 Castellanos’ opinions without providing specific and legitimate reasons that are
16 supported by substantial evidence in the record. This is harmful error that requires
17 remand.

18 **D. The Case will be Remanded for an Award of Benefits**

19 Ninth Circuit jurisprudence “requires remand for further proceedings in all but the
20 rarest cases.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1101 n.5 (9th Cir.
21 2014). The Ninth Circuit, however, has adopted a test to determine when a case should
22 be remanded for payment of benefits in cases where an ALJ has improperly rejected
23 claimant testimony or medical opinion evidence. *Id.* at 1100-01; *Garrison*, 759 F.3d at
24 1020. This test is commonly referred to as the “credit-as-true” rule, which consists of the
25 following three factors:

- 26 1. Has the ALJ failed to provide legally sufficient reasons for
27 rejecting evidence, whether claimant testimony or medical
28 opinion? *Treichler*, 775 F.3d at 1100-01.

- 1 2. Has the record been fully developed, are there outstanding
2 issues that must be resolved before a disability
3 determination can be made, or would further administrative
4 proceedings be useful? *Id.* at 1101. To clarify this factor, the
5 Ninth Circuit has stated that “[w]here there is conflicting
6 evidence, and not all essential factual issues have been
7 resolved, a remand for an award of benefits is
8 inappropriate.” *Id.*
- 9 3. If the improperly discredited evidence were credited as true,
10 would the ALJ be required to find the claimant disabled on
11 remand? *Id.*; *Garrison*, 759 F.3d at 1020.

12 Where a court has found that a claimant has failed to satisfy one of the factors of
13 the credit-as-true rule, the court does not need to address the remaining factors.
14 *Treichler*, 775 F.3d at 1107 (declining to address final step of the rule after determining
15 that the claimant has failed to satisfy the second step). Moreover, even if all three factors
16 are met, a court retains the discretion to remand a case for additional evidence or to
17 award benefits. *Id.* at 1101-02. A court may remand for further proceedings “when the
18 record as a whole creates serious doubt as to whether the claimant is, in fact, disabled
19 within the meaning of the Social Security Act.” *Garrison*, 759 F.3d at 1021. In
20 *Treichler*, the Ninth Circuit noted that “[w]here an ALJ makes a legal error, but the
21 record is uncertain and ambiguous, the proper approach is to remand the case to the
22 agency.” 775 F.3d at 1105.

23 After examining the record, the Court finds no outstanding issues of fact to be
24 resolved through further proceedings. The VE’s testimony establishes that if Drs. Kagie
25 and Castellanos’ opinions were credited-as-true, the ALJ would be required to find that
26 Plaintiff is disabled. (A.R. 59). The Court does not find any material evidence in the
27 record that creates serious doubt that Plaintiff is in fact disabled. Therefore, based on the
28 record, the Court finds it inappropriate to remand the case for further proceedings. *See*
Benecke v. Barnhart, 379 F.3d 587, 595 (9th Cir. 2004) (“Allowing the Commissioner to
decide the issue again would create an unfair ‘heads we win; tails, let’s play again’
system of disability benefits adjudication.”); *Moisa v. Barnhart*, 367 F.3d 882, 887 (9th

1 Cir. 2004) (“The Commissioner, having lost this appeal, should not have another
2 opportunity to show that Moisa is not credible any more than Moisa, had he lost, should
3 have an opportunity for remand and further proceedings to establish his credibility.”)
4 (citation omitted). The Court will remand the case for an immediate award of benefits
5 effective October 1, 2010 (the disability onset date).

6
7 **III. CONCLUSION**

8 Based on the foregoing,

9 **IT IS ORDERED** reversing the decision of the Commissioner of Social Security
10 and remanding this case to the Commissioner for an immediate award of benefits
11 effective October 1, 2010.

12 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
13 accordingly.

14 Dated this 31st day of January, 2019.

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17 Eileen S. Willett
18 United States Magistrate Judge
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