

O

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

LOUANN GAIL PETRUCCI,
Plaintiff,
v.
CAROLYN W. COLVIN,
Acting Commissioner of Social
Security,
Defendant.

) NO. CV-14-4411-KLS
)
) MEMORANDUM OPINION
)
) AND ORDER
)

INTRODUCTION

Plaintiff filed a Complaint on June 13, 2014, seeking review of the denial of plaintiff's application for a period of disability and disability insurance benefits ("DIB"). On August 27, 2015, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (ECF Nos. 18, 19.) On March, 5, 2015, the parties filed a Joint Stipulation ("Joint Stip.") in which plaintiff seeks an order reversing the Commissioner's decision and either remanding for further proceedings or awarding benefits to plaintiff. (Joint Stip. at 34.) The Commissioner requests that the ALJ's decision be affirmed or, in the alternative, remanded for further proceedings. (*Id.* 35.) The Court has taken the matter under submission without oral

1 argument.

2
3 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**
4

5 On September, 2, 2010, plaintiff, who was born on September 29, 1960, applied for a
6 period of disability and DIB. (Administrative Record (“A.R.”) 136.) Plaintiff alleged disability
7 commencing October 15, 2007 (*id.* 136), due to: depression; anxiety; post-traumatic stress
8 disorder; panic disorder; injuries to her left arm; rotator cuff syndrome; impingement syndrome
9 of the shoulder; chronic daily migraines; left ankle pain; and vision impairment (*id.* 55). Plaintiff
10 had previously worked as a lawyer. (*Id.* 56.)
11

12 The Commissioner denied plaintiff’s application initially (A.R. 91) and again upon
13 reconsideration (*id.* 100). On September 19, 2012, plaintiff, who was represented by counsel,
14 appeared at a hearing and testified before Administrative Law Judge Evelyn M. Gunn (“ALJ”). (*Id.*
15 52.) Gail Maron, a vocational expert (“VE”), also testified. (*Id.* 67.) On November 28, 2012, the
16 ALJ issued an unfavorable decision. (*Id.* 26.) On April 8, 2014, the Appeals Council denied
17 plaintiff’s request for review. (*Id.* 1.)
18

19 **SUMMARY OF ADMINISTRATIVE DECISION**
20

21 The ALJ found that plaintiff had not engaged in substantial gainful activity from her alleged
22 onset date of October 15, 2007, through her date last insured of March 31, 2011. (A.R. 31.) The
23 ALJ determined that plaintiff had the severe medically determinable impairments of left arm
24 weakness and affective mood disorders, including personality disorder and anxiety disorder. (*Id.*)
25 The ALJ also concluded that these impairments did not satisfy the requirements of a listed
26 impairment in 20 C.F.R. part 404, subpart P, appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525,
27 404.1526). (*Id.*)
28

1 The ALJ determined that plaintiff had the residual functional capacity (“RFC”) to perform
2 light work as defined in 20 CFR 404.1567(b) except for:

3
4 “any work involving more than occasional climbing, balancing, stooping, kneeling,
5 crouching or crawling; and any work involving more than understanding and remembering
6 simple instructions and completing simple work-related tasks.”
7

8 (A.R. 32.) The ALJ concluded that plaintiff was unable to perform any past relevant work because
9 the VE testified that an individual with plaintiff’s vocational profile and RFC would not be capable
10 of practicing law. (*Id.* 36.) However, the ALJ found that plaintiff could perform jobs that exist
11 in significant numbers in the national economy, namely, those of cashier, office helper, or ticket
12 taker. (*Id.* 37.) Accordingly, the ALJ found that plaintiff was not disabled during the alleged
13 period of disability. (*Id.* 17.)
14

15 STANDARD OF REVIEW

16

17 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine
18 whether it is free from legal error and supported by substantial evidence in the record as a whole.
19 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). “Substantial evidence is ‘more than a mere
20 scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might
21 accept as adequate to support a conclusion.’” *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519,
22 522-23 (9th Cir. 2014) (internal citations omitted). “Even when the evidence is susceptible to
23 more than one rational interpretation, we must uphold the ALJ’s findings if they are supported
24 by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir.
25 2012).
26

27 Although this Court cannot substitute its discretion for that of the Commissioner, the Court
28 nonetheless must review the record as a whole, “weighing both the evidence that supports and

1 the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v. Astrue*, 504
2 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted); *Desrosiers v.*
3 *Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ is responsible for
4 determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities.”
5 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

6
7 The Court will uphold the Commissioner’s decision when the evidence is susceptible to
8 more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).
9 However, the Court may review only the reasons stated by the ALJ in his decision “and may not
10 affirm the ALJ on a ground upon which he did not rely.” *Orn*, 495 F.3d at 630; *see also Connett*
11 *v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not reverse the Commissioner’s
12 decision if it is based on harmless error, which exists only when it is “clear from the record that
13 an ALJ’s error was ‘inconsequential to the ultimate nondisability determination.’” *Robbins v. Soc.*
14 *Sec. Admin.*, 466 F.3d 880, 885 (9th Cir. 2006) (quoting *Stout v. Comm’r of Soc. Sec.*, 454 F.3d
15 1050, 1055 (9th Cir. 2006)); *see also Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1162 (9th
16 Cir. 2008).

17 18 **DISCUSSION**

19
20 The sole issue in dispute is whether the ALJ gave proper consideration to the mental
21 limitations identified by plaintiff’s treating and examining psychiatrists. Plaintiff contends that the
22 ALJ did not properly evaluate: (1) the opinions of Dr. David Reynolds, plaintiff’s treating
23 psychiatrist, that plaintiff has “a poor capacity for sustained concentration and persistence” and
24 “no reliable capacity to complete a normal workday or workweek” (Joint Stip. at 11); (2) the
25 shared opinion of Dr. Reynolds and Dr. Suzanne Ashman, plaintiff’s examining psychiatrist,
26 regarding plaintiff’s “moderate limitations in the ability to perform work activities on a consistent
27 basis” (*id.* 5); and (3) the shared opinion of Dr. Reynolds and Dr. Stephen Scott, plaintiff’s
28 reviewing psychiatrist, regarding plaintiff’s anxiety and mood disorder symptoms (*id.* 8). In

1 deciding whether the ALJ's decision is supported by substantial evidence, the court must consider
2 the combined effect of all of claimant's impairments without regard to whether any such
3 impairment, if considered separately, would be of sufficient medical severity. 42 U.S. C §
4 1382C(G); 20 C.F.R. § 404.1523; and see *Gregory v. Bowen*, 844 F.2d 664 (9th Cir. 1988)
5 (remanding with instructions to enter judgment allowing disability claim where finding that
6 claimant was not disabled by her psychological problems was not supported by substantial
7 evidence). Here, for the reasons discussed below, substantial evidence does not support the ALJ
8 disregarding treating and examining psychiatrists' opinions about plaintiff's mental limitations.

9
10 **I. The ALJ Erred By Failing To Properly Evaluate Dr. Reynolds' Opinion.**

11
12 **A. Treating Psychiatrist's Opinion Not Given Controlling Weight.**

13
14 Plaintiff contends that the ALJ erred in her evaluation of the opinion of board certified
15 psychiatrist Dr. David Reynolds, M.D., who treated plaintiff for anxiety, PTSD, and depression
16 since 2010 (A.R. 295). Dr. Reynolds completed a medical source statement on October 1, 2010,
17 in which he indicated that plaintiff had "poor" ability to carry out instructions, attend and
18 concentrate, and work without supervision. (*Id.* 295.) Dr. Reynolds diagnosed plaintiff with
19 anxiety, PTSD, and major depression (*see id.* 267, 269, 272, 274, 277, 344, 346, 348, 350, 353.)
20 Dr. Reynolds completed a second medical source statement on April 22, 2011, in which he
21 indicated that plaintiff was not able to perform the following tasks on a "regular, reliable, and
22 sustained schedule": understand, remember, and carry out simple instructions; interact
23 appropriately with the general public; and get along with coworkers without being distracting.
24 (*Id.* 538-40). In sum, Dr. Reynolds determined that "the claimant has markedly severe functional
25 mental and emotional limitations." (A.R. 36.) In determining that plaintiff was not disabled, the
26 ALJ discounted Dr. Reynolds' assessment as being unsupported by the relevant progress notes.
27 (*Id.*) Even though Dr. Reynolds had the longest treating relationship with Plaintiff, dating from
28 2010, the ALJ did "not give controlling weight to the opinion of Dr. Reynolds." (*Id.*)

1 The ALJ's failure to give due deference to the treating psychiatrist's opinion is legal error.
2 The opinions of treating physicians are entitled to special weight because the treating physician
3 is hired to cure and has a better opportunity to know and observe the claimant as an individual.
4 *Connett*, 340 F.3d 874; *Thomas v. Barnhart*, 278 F.3d 947, 956-57 (9th Cir. 2002); *Magallanes*
5 *v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). When a treating or examining physician's opinion
6 is not contradicted by another physician, it may be rejected only for "clear and convincing"
7 reasons that are supported by substantial evidence. *Ghanim v. Colvin*, 763 F.3d 1154, 1160-61
8 (9th Cir. 2014); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Even when contradicted, "a
9 treating or examining physician's opinion is still owed deference and will often be entitled to the
10 greatest weight" in disability proceedings. *Garrison v. Colvin*, 759 F. 3d 995, 1012 (9th Cir. 2014).
11 When it is contradicted by another doctor's opinion, a treating or examining physician's opinion
12 may only be rejected if, after considering the factors set out in 20 C.F.R. § 404.1527(c)-(6) for
13 evaluating medical opinions, the ALJ articulates "specific and legitimate" reasons supported by
14 substantial evidence in the record. *Garrison*, 759 F.3d at 1012; *Orn*, 495 F.3d at 632.

15
16 Here, Dr. Reynolds' opinion that plaintiff may have difficulty understanding, remembering,
17 and carrying out simply instructions; and getting along with coworkers without being distracting,
18 differs from Dr. Scott's opinion (A.R. 339 - Mental RFC Assessment 2/18/11) and Dr. Ashman's
19 opinion (*id.* 245 - Comprehensive Psychiatric Evaluation 11/15/08). Furthermore, Dr. Reynolds'
20 opinion that plaintiff may have difficulty interacting with the general public also conflicts with Dr.
21 Ashman's opinion. (*Id.*) In the face of conflicting medical opinions, the ALJ was required to
22 provide specific and legitimate reasons, supported by substantial evidence, for discounting Dr.
23 Reynolds' opinion, but did not do so.

24
25 B. ALJ Discounted Dr. Reynold's Assessment of Plaintiff's Mental Limitations

26
27 The ALJ cited six reasons for her decision to discount Dr. Reynolds' assessment of plaintiff's
28 mental limitations:

1 (1) lack of evidence establishing plaintiff's alleged onset date of October 15, 2007; (2) the
2 varying intensity of plaintiff's symptoms over time; (3) the fact that personal stressors,
3 such as plaintiff's custody battle with her ex-husband, may have contributed to her
4 condition; (4) unremarkable mental status examinations; (5) plaintiff's ability to travel to
5 Pennsylvania which contradicted the alleged severity of her symptoms; and (6) the fact
6 that plaintiff sometimes experienced no medication side-effects.

7
8 (A.R. 36).

9
10 The first reason for discounting Dr. Reynolds' assessment, *i.e.*, that plaintiff provided no
11 evidence supporting her alleged onset date of October 15, 2007, is not relevant to Dr. Reynolds'
12 opinion, which never purported to cover the period of time before he started treating plaintiff in
13 2010. Furthermore, Dr. Suzanne Ashman indicated that plaintiff was treated by Dr. Gaddis, a
14 psychiatrist, in 2007, and had been hospitalized at least ten times, including for an alleged suicide
15 attempt in 2007. (A.R. 245 - 11/15/08.)

16
17 C. Variation in Plaintiff's Condition Is Not A Legitimate Reason Supported By
18 Substantial Evidence to Discount The Treating Psychiatrist's Assessment.

19
20 The ALJ's second reason for discounting Dr. Reynolds' assessment was that the severity
21 of plaintiff's condition varied in intensity between 2010 and 2011 without evidence of significant
22 deterioration in plaintiff's functioning. However, in *Garrison*, the Ninth Circuit rejected a similarly
23 conclusory reason for discrediting a claimant's mental health assessment on the grounds that the
24 condition improved at points. *Garrison*, 759 F.3d at 1017 (reports of improvement in the context
25 of mental health issues must be "interpreted with an awareness that improved functioning while
26 being treated and while limiting environmental stressors does not always mean that a claimant
27 can function effectively in a workplace.") In *Garrison*, where, like here, the claimant reportedly
28 suffered recurring bouts of depression, anxiety and occasional suicidal thoughts, the Ninth Circuit

1 noted that a claimant's mental health symptoms can be expected to "wax and wane in the course
2 of treatment." *Id.*

3
4 More significantly, in this instance, the progress notes reflecting plaintiff's ten-month
5 treatment relationship with Dr. Reynolds show that plaintiff's anxiety, PTSD, and depression did
6 not meaningfully improve at any point. (A.R. 279.) On August 19, 2010, Dr. Reynolds stated that
7 plaintiff suffered from de-realization, insomnia, paranoia, and intense anxiety, and was prescribed
8 Perphenazine in addition to her Cymbalta and Klonopin prescriptions. (See A.R. 279 - Progress
9 Notes 8/19/10.) On August 26, 2010, Dr. Reynolds diagnosed plaintiff with severe major
10 depression and hospitalized her because she was tearful, hopeless, paranoid, and had persecutory
11 delusions, excessive guilt, and suicidal ideation. (*Id.* 277 - Progress Notes 8/26/10.) After her
12 release, plaintiff was also prescribed Seroquel and felt very anxious, though her symptoms were
13 understandably not as severe as they had been during her hospitalization. (*Id.* 272 - Progress
14 Notes 9/9/10.)

15
16 By September 16, 2010, she continued to feel hopeless, the Seroquel increased the
17 frequency of her migraines, and plaintiff was suffering chest pain from her Imitrex prescription.
18 (*Id.* 269 - Progress Notes 9/16/10.) By September 27, 2010, plaintiff felt depressed and hopeless,
19 with slightly-less anxiety; however, she also suffered suicidal ideation, and was prescribed
20 Trazodone in addition to her Cymbalta and Klonopin prescriptions. (*Id.* 267 - Progress Notes
21 9/27/10.) On February 25, 2011, plaintiff suffered from anxiety, depression, and PTSD, and
22 complained that her medications were not working, nightmares prevented her from sleeping, and
23 she felt reluctant to leave her home. (*Id.* 344 - Progress Notes 2/25/11.) By March 14, 2011, Dr.
24 Reynolds diagnosed mild depression, PTSD, and major anxiety; and plaintiff complained that she
25 felt afraid, anxious, sedated from medications, and suffered migraines more frequently. (*Id.* 346 -
26 Progress Notes 3/14/11.) Dr. Reynolds prescribed Ambien. (*Id.*) By March 30, 2011, plaintiff felt
27 depressed, frustrated, and anxious; however, her migraines decreased in frequency. (*Id.* 348 -
28 Progress Notes 3/30/11.) By April 20, 2011, plaintiff still suffered from PTSD, anxiety, and

1 depression; moreover, she was frequently incapacitated by migraines, and suffered from poor
2 memory and concentration. (*Id.* 350 - Progress Notes 4/20/11.) Accordingly, Dr. Reynolds added
3 Nortriptyline (NTP) to plaintiff's prescription. (*Id.*) On May 11, 2011, plaintiff felt more depressed
4 than usual and was suffering from migraines more frequently. (*Id.* 353 - Progress Notes
5 5/11/11.) Dr. Reynolds prescribed a higher dose of NTP. (*Id.*)

6
7 To say that plaintiff's condition "varied in intensity," so as to imply improvement, is a
8 mischaracterization. Dr. Reynolds' progress reports chronicle plaintiff's struggle with depression,
9 anxiety, PTSD, and incapacitating migraines up-to plaintiff's date last insured, and at no point
10 show sustained improvement or stabilization. Thus, the ALJ erred in citing the variability of
11 plaintiff's condition as a reason for discounting Dr. Reynolds' indication that plaintiff may have
12 difficulty understanding, remembering, and carrying out simple instructions; getting along with
13 co-workers; and interacting with the general public. (A.R. 538-39 - Medical Source Statement
14 4/22/11.)

15
16 D. The ALJ Improperly Substituted Her Own Opinions as to the Cause and Severity of
17 Plaintiff's Mental Limitations.

18
19 The ALJ's third reason for discounting Dr. Reynolds' assessment was the ALJ's conclusion
20 that plaintiff's mental impairments were caused by plaintiff's family problems. (A.R. at 36.)
21 However, the cause of plaintiff's impairment is not relevant to the question of their severity and
22 limiting effects. Furthermore, although Dr. Reynolds suggested that plaintiff's family troubles may
23 have contributed to her condition (*see e.g.*, A.R. 276 Progress Notes of 8/30/10), nothing in the
24 record conclusively determined what caused plaintiff's impairments. Indeed, Dr. Ashman,
25 examining psychiatrist, expressly noted that the mood and anxiety symptoms "may be part of *or*
26 *may be separate from*" severe and traumatic stressors in plaintiff's family life. (A.R. 246
27 (emphasis added).) Accordingly, the ALJ's finding that plaintiff's condition was solely triggered
28 by her family problems was conclusory, and not supported by substantial evidence needed justify

1 discounting Dr. Reynolds' opinions. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)
2 (The ALJ must do more than offer [her] conclusions. [Sh]e must set forth [her] own
3 interpretations and explain why they, rather than the doctors', are correct); *see also Clifford v.*
4 *Apfel*, 227 F.3d 863, 870 (7th Cir. 2000)) (as amended (Dec. 13, 2000)) ("ALJs must not succumb
5 to the temptation to play doctor and make their own independent medical findings.")
6

7 The ALJ's fourth reason for discounting Dr. Reynolds' assessment was that the ALJ
8 concluded that some of plaintiff's limitations were merely "moderate." (A.R. 540.) The ALJ must
9 consider the combined effect of all of the claimant's impairments on her ability to function,
10 without regard to the severity of those impairments. *See Smolen v. Chater*, 80 F.3d 1273,
11 1289-90 (9th Cir. 1996); *see also* 42 U.S.C. § 423(d)(2)(B); 20 C.F.R. §§ 404.1523, 416.923;
12 *Vasquez v. Astrue*, 527 F.3d 586, 594-97 (9th Cir. 2009) (citing 20 C.F.R. §§ 404.1523 when
13 concluding that ALJ did not account for the mental impairments when determining RFC.) Further,
14 moderate limitations, such as those described by Dr. Reynolds, (A.R. 538-39) can prevent a
15 claimant from working, especially when considered in the aggregate with other limitations. *See*
16 *Andrews*, 53 F.3d 1044. Accordingly, the ALJ's fourth reason for discounting Dr. Reynolds' opinion
17 was not legitimate.
18

19 The ALJ's fifth reason for discounting Dr. Reynolds' assessment was that plaintiff's
20 scattered trips to Pennsylvania are inconsistent with Dr. Reynolds' assessment of the severity of
21 plaintiff's condition. However, the ALJ did not explain how plaintiff's ability to take a handful of
22 trips (only one of which was taken while Dr. Reynolds treated plaintiff) over the course of roughly
23 three years, and in order to address pressing family troubles, is inconsistent with Dr. Reynolds'
24 indication that plaintiff may have difficulty understanding, remembering, and carrying out
25 instructions, (A.R. 538 - Medical Source Statement 4/22/11) or completing a normal workday and
26 workweek without interruptions from her condition (A.R. 539 - Medical Source Statement
27 4/22/11). There is no indication that making four or five trips over several years required a level
28 of mental capacity beyond what Dr. Reynolds assessed. Further, the record suggests that

1 plaintiff's mental impairments did occasionally interfere with her ability to make some of these
2 trips. (*Id.* 1088, 1182) (4/22/2012 - plaintiff tells social worker Ms. McKenna that plaintiff feels
3 incapable of returning to Pennsylvania and worries that her son will not be able to visit her in
4 California.) Finally, plaintiff's occasional trips are not evidence that she could sustain full time
5 employment. Thus, the mere fact that plaintiff visited Pennsylvania is not a legitimate reason for
6 discounting Dr. Reynolds' opinion.

7
8 The final reason the ALJ cited in discounting Dr. Reynolds' opinion was that plaintiff did
9 not suffer from medication side-effects at times. (A.R. 36, noting that "the progress notes
10 indicated on several occasions that there were no medication side effects.") The ALJ offered no
11 explanation how or why this might support discounting the treating physician's opinion of
12 plaintiff's mental limitations for purposes of the disability determination. The absence of
13 medication side-effects on occasion does not provide specific and legitimate reasons supported
14 by substantial evidence to discount the treating psychiatrist's opinions. Dr. Reynolds did not base
15 his opinion on plaintiff's medication side-effects, but, rather, on the severity of plaintiff's mental
16 impairments despite those medications. (*See* A.R. 267, 269, 272, 274, 277, 344, 346, 348, 350,
17 353.) Further, the Dr. Reynolds' progress notes indicate that plaintiff's multiple psychiatric
18 medications regularly caused significant side effects, including: migraines (*id.* 269 – Progress
19 Notes 9/16/10); insomnia (*id.* 334 – Progress Notes 2/25/11); feeling sedated (*id.* 346 - Progress
20 Notes 3/14/11); and chest pain (*id.* 269 - Progress Notes 9/16/10). (*See also id.* 267, 269, 272,
21 274, 277, 344, 346, 348, 350, 353.) Thus, the fact that plaintiff did not suffer from medication
22 side-effects at times is neither a legitimate reason, nor a reason supported by substantial
23 evidence for discounting Dr. Reynolds' assessment.

24 \\
25 \\
26 \\
27 \\
28 \\
29

1 **II. The ALJ Erred By Failing To Properly Evaluate The Shared Opinion Of Dr.**
2 **Reynolds And Dr. Ashman That Plaintiff Would Have Difficulty Completing**
3 **A Workday or Workweek.**

4
5 Plaintiff alleges that the ALJ erred in her evaluation of the shared opinions of Dr. Reynolds,
6 and Dr. Ashman. Dr. Reynolds found that plaintiff was unable to complete a normal workday and
7 work week without interruptions from her condition. (A.R. 295 - Medical Source Statement
8 10/1/10) (*see also id.* 538-40 - Medical Source Statement 4/22/11, several weeks after plaintiff's
9 date last insured.) Dr. Ashman similarly found that plaintiff would have difficulty completing a
10 normal workday and workweek without interruptions from her condition. (*Id.* 245 -
11 Comprehensive Psychiatric Evaluation 11/15/08.) Dr. Scott, however, disagreed with this
12 assessment. (*Id.* 340 - Mental RFC Assessment 2/18/11.)

13
14 The ALJ did not discuss Dr. Ashman's opinion, seemingly rejecting it for the same reasons
15 that she rejected Dr. Reynolds' opinion. However, as explained above, the ALJ's reasons for
16 rejecting Dr. Reynolds' opinion were not specific, nor legitimate, and they were not supported by
17 substantial evidence. The ALJ's reasons are especially inadequate, given the agreement between
18 the treating and examining physicians. Accordingly, the ALJ erred by failing to provide specific
19 and legitimate reasons supported by substantial evidence for rejecting Dr. Reynolds' and Dr.
20 Ashman's shared opinion that plaintiff was unable to complete a normal workday and workweek
21 without interruptions due to her condition.

22
23 **III. The ALJ Erred By Failing To Properly Evaluate The Shared Opinion Of**
24 **Dr. Reynolds And Dr. Scott That Plaintiff Would Have Difficulty**
25 **Interacting With The General Public.**

26
27 Plaintiff alleges that the ALJ erred in her evaluation of the shared opinions of Dr. Reynolds,
28 and Dr. Scott. Dr. Reynolds found that plaintiff would have difficulty interacting with the general

1 public. (A.R. 295 - Medical Source Statement 10/1/10) (*see also id.* 538-40 - Medical Source
2 Statement 4/22/11.) Dr. Scott similarly found that plaintiff would have difficulty interacting with
3 the general public. (A.R. 340 - Mental RFC Assessment 2/18/11.) Dr. Ashman disagreed with this
4 assessment. (*Id.* 245 - Comprehensive Psychiatric Evaluation 11/15/08.)

5
6 As with Dr. Ashman's opinion, the ALJ did not discuss Dr. Scott's opinion and seemingly
7 rejected it for the same reasons that she rejected Dr. Reynolds' opinion. As explained above, the
8 ALJ's reasons for rejecting Dr. Reynolds' opinion were not specific, nor legitimate, and they were
9 not supported by substantial evidence. Accordingly, the ALJ erred by failing to provide specific
10 and legitimate reasons supported by substantial evidence for rejecting the shared opinion of Dr.
11 Reynolds and Dr. Scott that plaintiff would have difficulty interacting with the general public.

12
13 When a court determines that an ALJ improperly discounted testimony of a claimant or the
14 opinion of a treating physician, the court may remand the action for calculation and payment of
15 benefits if three conditions are met: (1) the record has been fully developed and further
16 administrative proceedings would serve no useful purpose; (2) the ALJ failed to provide legally
17 sufficient reasons for rejecting the evidence, whether from the claimant or a medical opinion; and
18 (3) if the improperly evaluated evidence were credited as true, the ALJ would be required to find
19 the claimant disabled on remand. *Garrison v. Colvin*, 759 F.3d at 1020.¹ In this instance, only
20 the second of these prongs is satisfied. It is not clear that, even after properly crediting the
21 medical opinion testimony of Drs. Reynolds, Scott, and Ashman, the ALJ would be required to find

22
23 ¹ Plaintiff contends that the Court should remand for an immediate award of benefits
24 under the Ninth Circuit's "credit-as-true" rule articulated in *Garrison*. (Joint Stip. 4, 10, 13.)
25 However, the Ninth Circuit recently emphasized that a "remand for an immediate award of
26 benefits is appropriate [] only in 'rare circumstances.'" "*Brown-Hunter v. Colvin* 2015 U.S. App.
27 LEXIS 13560 (9thCir. 2015) (internal citation omitted). For the reasons discussed above, the
28 instant case does not present such circumstances.

1 Plaintiff disabled. Further administrative proceedings would serve to determine Plaintiff's actual
2 capacities and abilities in light of a proper assessment of her mental limitations.


3
4 **CONCLUSION**

5
6 For the reasons stated above, the Court finds that the ALJ's decision is not supported by
7 substantial evidence. Accordingly, IT IS ORDERED that this case be REMANDED for further
8 proceedings.

9
10 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this
11 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for defendant.

12
13 **REMANDED FOR FURTHER CONSIDERATION.**

14
15 DATED: August 31, 2015

16 
17 KAREN L. STEVENSON
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28