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

MICHELLE PROCTOR,

Plaintiff,

v.

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant.

No. CV 14-7437-PLA

MEMORANDUM OPINION AND ORDER

I.

PROCEEDINGS

Plaintiff filed this action on September 29, 2014, seeking review of the Commissioner’s denial of her application for Supplemental Security Income (“SSI”) payments. The parties filed Consents to proceed before the undersigned Magistrate Judge on March 13, 2015, and March 18, 2015.¹ On February 11, 2015, plaintiff filed a Memorandum of Points and Authorities in Support of Relief Requested in Plaintiff’s Complaint (“Plaintiff’s Brief” or “PB”), addressing the disputed

¹ The parties filed Consents to proceed before the previously assigned Magistrate Judge on December 2, 2014, and March 11, 2015. This matter was reassigned to the undersigned Magistrate Judge on March 12, 2015, and the prior consents were vacated.

1 issues in the case. On March 6, 2015, the Commissioner filed Defendant’s Brief in Opposition to
2 Complaint (“Opposition” or “Opp’n”). On March 11, 2015, plaintiff filed a Reply Memorandum
3 (“Reply”). The Court has taken these submissions under submission without oral argument.
4

5 **II.**

6 **BACKGROUND**

7 Plaintiff was born on September 28, 1969. [Administrative Record (“AR”) at 26, 103.²] She
8 has no past relevant work experience. [AR at 26.]

9 On June 1, 2009, plaintiff filed an application for SSI payments, alleging that she has been
10 unable to work since December 24, 2005. [AR at 131, 251.] She subsequently amended her
11 alleged onset date to June 1, 2009, the date the application was filed. [AR at 18, 131.] After her
12 application was denied initially and upon reconsideration, plaintiff timely filed a request for a
13 hearing before an Administrative Law Judge (“ALJ”). [AR at 131, 163-64.] A hearing was held on
14 August 22, 2011, at which time plaintiff appeared represented by an attorney, and testified on her
15 own behalf. [AR at 100-25.] A vocational expert (“VE”) also testified. [AR at 116-24.] On
16 September 9, 2011, the ALJ issued a decision concluding that plaintiff was not under a disability
17 from June 1, 2009, the date the application was filed. [AR at 131-39.] Plaintiff requested review
18 of the ALJ’s decision by the Appeals Council. [AR at 187.]

19 On January 3, 2013, the Appeals Council granted the request for review “under the error
20 law provision” of the regulations, vacated the September 9, 2011, decision, and remanded the
21 case to an ALJ to address the third-party function report of Tyasha Johnson and to consider
22 indications of excessive body weight. [AR at 144-45.] In addition, the Appeals Council ordered
23 the ALJ on remand to: (1) “[e]valuate the treating and nontreating source opinions . . . ,
24 nonexamining source opinions . . . , and other source opinions . . . , and explain the weight given
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26 ² Although the ALJ indicated that plaintiff’s date of birth is September 8, 1969 [AR at 26], and her
27 SSI application also reflects that date [AR at 251], plaintiff testified at the August 22, 2011, hearing that
28 her birthday is September 28, 1969. [AR at 103.] Medical records also reflect that date. [See, e.g.,
AR at 401, 417.]

1 to such opinion evidence”; (2) “consider the indications of excessive body weight”; (3) “[g]ive
2 further consideration to [plaintiff]’s maximum residual functional capacity and provide appropriate
3 rationale with specific references to evidence of record in support of the assessed limitations”; and
4 (4) “[o]btain supplemental evidence from a vocational expert to clarify the effect of the assessed
5 limitations on [plaintiff]’s occupational base.” [Id.] The Appeals Council further ordered the ALJ
6 to “offer [plaintiff] an opportunity for a hearing, [and] take any further action needed to complete
7 the administrative record and issue a decision.” [AR at 145.]

8 On March 4, 2013, a second hearing was held before the same ALJ, at which time plaintiff
9 did not appear. [AR at 95-99.] Plaintiff’s attorney represented at the hearing that plaintiff “was
10 arrested and in jail at the moment,” and requested that the hearing be rescheduled. [AR at 97.]
11 The ALJ rescheduled the hearing. [AR at 99.]

12 On April 15, 2013, a third hearing was held before the same ALJ, at which time plaintiff
13 appeared represented by an attorney, and testified on her own behalf. [AR at 68-94.] In addition,
14 a third party witness and a different VE testified. [AR at 82-92.] On April 26, 2013, the ALJ issued
15 a decision concluding that plaintiff was not under a disability from June 1, 2009, the application
16 filing date. [AR at 18-27.] When the Appeals Council denied plaintiff’s request for review on July
17 30, 2014 [AR at 1-5], the ALJ’s decision became the final decision of the Commissioner. See Sam
18 v. Astrue, 550 F.3d 808, 810 (9th Cir. 2008) (per curiam) (citations omitted). This action followed.

20 III.

21 **STANDARD OF REVIEW**

22 Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner’s
23 decision to deny benefits. The decision will be disturbed only if it is not supported by substantial
24 evidence or if it is based upon the application of improper legal standards. Berry v. Astrue, 622
25 F.3d 1228, 1231 (9th Cir. 2010) (citation omitted).

26 “Substantial evidence means more than a mere scintilla but less than a preponderance; it
27 is such relevant evidence as a reasonable mind might accept as adequate to support a
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1 conclusion.” Carmickle v. Comm’r, Soc. Sec. Admin., 533 F.3d 1155, 1159 (9th Cir. 2008) (citation
2 and internal quotation marks omitted); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998)
3 (same). When determining whether substantial evidence exists to support the Commissioner’s
4 decision, the Court examines the administrative record as a whole, considering adverse as well
5 as supporting evidence. Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001) (citation omitted);
6 see Ryan v. Comm’r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (“[A] reviewing court must
7 consider the entire record as a whole and may not affirm simply by isolating a specific quantum
8 of supporting evidence.”) (citation and internal quotation marks omitted). “Where evidence is
9 susceptible to more than one rational interpretation, the ALJ’s decision should be upheld.” Ryan,
10 528 F.3d at 1198 (citation and internal quotation marks omitted); see Robbins v. Soc. Sec. Admin.,
11 466 F.3d 880, 882 (9th Cir. 2006) (“If the evidence can support either affirming or reversing the
12 ALJ’s conclusion, [the reviewing court] may not substitute [its] judgment for that of the ALJ.”)
13 (citation omitted).

14 15 IV.

16 THE EVALUATION OF DISABILITY

17 Persons are “disabled” for purposes of receiving Social Security benefits if they are unable
18 to engage in any substantial gainful activity owing to a physical or mental impairment that is
19 expected to result in death or which has lasted or is expected to last for a continuous period of at
20 least twelve months. 42 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
21 1992).

22 23 A. THE FIVE-STEP EVALUATION PROCESS

24 The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing
25 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lester v. Chater, 81 F.3d 821,
26 828 n.5 (9th Cir. 1995), as amended April 9, 1996. In the first step, the Commissioner must
27 determine whether the claimant is currently engaged in substantial gainful activity; if so, the
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1 claimant is not disabled and the claim is denied. Id. If the claimant is not currently engaged in
2 substantial gainful activity, the second step requires the Commissioner to determine whether the
3 claimant has a “severe” impairment or combination of impairments significantly limiting her ability
4 to do basic work activities; if not, a finding of nondisability is made and the claim is denied. Id.
5 If the claimant has a “severe” impairment or combination of impairments, the third step requires
6 the Commissioner to determine whether the impairment or combination of impairments meets or
7 equals an impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R. part 404,
8 subpart P, appendix 1; if so, disability is conclusively presumed and benefits are awarded. Id. If
9 the claimant’s impairment or combination of impairments does not meet or equal an impairment
10 in the Listing, the fourth step requires the Commissioner to determine whether the claimant has
11 sufficient “residual functional capacity” to perform her past work; if so, the claimant is not disabled
12 and the claim is denied. Id. The claimant has the burden of proving that she is unable to
13 perform past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets this burden, a
14 prima facie case of disability is established. Id. The Commissioner then bears the burden of
15 establishing that the claimant is not disabled, because she can perform other substantial gainful
16 work available in the national economy. Id. The determination of this issue comprises the fifth
17 and final step in the sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester, 81 F.3d at
18 828 n.5; Drouin, 966 F.2d at 1257.

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20 **B. THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS**

21 At step one, the ALJ found that plaintiff had not engaged in substantial gainful activity since
22 June 1, 2009, the application filing date. [AR at 20.] At step two, the ALJ concluded that plaintiff
23 has the following severe impairments: “[m]ood disorder NOS [not otherwise specified]; anxiety
24 disorder NOS; panic disorder with agoraphobia; and morbid obesity.” [Id.] At step three, the ALJ
25 determined that plaintiff does not have an impairment or a combination of impairments that meets
26 or medically equals any of the impairments in the Listings. [AR at 22.] The ALJ further found that

1 plaintiff retained the residual functional capacity (“RFC”)³ to perform medium work as defined in
2 20 C.F.R. § 416.967(c),⁴ “reduced since the prior decision due to obesity,” that requires “only
3 simple repetitive tasks, no greater than occasional interaction with supervisors, coworkers, and
4 the public; and . . . no rapid paced high production quota.” [AR at 23.] At step four, the ALJ
5 concluded that plaintiff has no past relevant work. [AR at 26.] At step five, based on plaintiff’s
6 RFC, vocational factors, and the VE’s testimony, the ALJ found that there are jobs existing in
7 significant numbers in the national economy that plaintiff can perform, including work as a “laundry
8 worker” (Dictionary of Occupational Titles (“DOT”) No. 361.685-018), and “warehouse worker”
9 (DOT No. 922.687-058). [AR at 27, 87-90.] Accordingly, the ALJ determined that plaintiff was not
10 disabled at any time since the application filing date. [AR at 27.]

11
12 **V.**

13 **THE ALJ’S DECISION**

14 Plaintiff contends that the ALJ erred when she: (1) rejected the opinion of plaintiff’s treating
15 psychiatrist, Vida Parsa, M.D.; (2) determined plaintiff’s mental RFC; (3) addressed the third party
16 evidence from Tyasha Johnson; and (4) rejected plaintiff’s subjective symptom testimony. [PB at
17 1, 6, 8-9.]

18 As set forth below, the Court agrees with plaintiff and remands for further proceedings.

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24 ³ RFC is what a claimant can still do despite existing exertional and nonexertional limitations.
25 See Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). “Between steps three and four of the
26 five-step evaluation, the ALJ must proceed to an intermediate step in which the ALJ assesses the
claimant’s residual functional capacity.” Massachi v. Astrue, 486 F.3d 1149, 1151 n.2 (9th Cir. 2007)
(citation omitted).

27 ⁴ “Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying
28 of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she
can also do sedentary and light work.” 20 C.F.R. § 416.967(c).

1 **A. MEDICAL OPINIONS**

2 **1. Legal Standard**

3 “There are three types of medical opinions in social security cases: those from treating
4 physicians, examining physicians, and non-examining physicians.” Valentine v. Comm’r Soc. Sec.
5 Admin., 574 F.3d 685, 692 (9th Cir. 2009); see also 20 C.F.R. §§ 416.902, 416.927. “As a general
6 rule, more weight should be given to the opinion of a treating source than to the opinion of doctors
7 who do not treat the claimant.” Lester, 81 F.3d at 830; Garrison v. Colvin, 759 F.3d 995, 1012 (9th
8 Cir. 2014) (citing Ryan, 528 F.3d at 1198); Turner v. Comm’r of Soc. Sec., 613 F.3d 1217, 1222
9 (9th Cir. 2010). “The opinion of an examining physician is, in turn, entitled to greater weight than
10 the opinion of a nonexamining physician.” Lester, 81 F.3d at 830; Ryan, 528 F.3d at 1198.

11 “[T]he ALJ may only reject a treating or examining physician’s uncontradicted medical
12 opinion based on clear and convincing reasons.” Carmickle, 533 F.3d at 1164 (citation and
13 internal quotation marks omitted); Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).
14 “Where such an opinion is contradicted, however, it may be rejected for specific and legitimate
15 reasons that are supported by substantial evidence in the record.” Carmickle, 533 F.3d at 1164
16 (citation and internal quotation marks omitted); Ryan, 528 F.3d at 1198; Ghanim v. Colvin, 763
17 F.3d 1154, 1160-61 (9th Cir. 2014); Garrison, 759 F.3d at 1012. The ALJ can meet the requisite
18 specific and legitimate standard “by setting out a detailed and thorough summary of the facts and
19 conflicting clinical evidence, stating his interpretation thereof, and making findings.” Reddick, 157
20 F.3d at 725. The ALJ “must set forth his own interpretations and explain why they, rather than the
21 [treating or examining] doctors’, are correct.” Id.

22
23 **2. Dr. Parsa**

24 Dr. Parsa, plaintiff’s treating psychiatrist at Ventura County Behavioral Health [see, e.g.,
25 AR at 425, 446], treated plaintiff four times between December 22, 2010, and June 10, 2011 [AR
26 at 425-27, 430], prescribed medication to plaintiff during that time period [AR at 420-21], and had
27 access to plaintiff’s treatment records from Ventura County Behavioral Health where she had been
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1 treated since approximately September 2009. [See AR at 357, 446.] In December 2010, Dr.
2 Parsa assessed plaintiff with mood disorder, not otherwise specified, and rule out major
3 depressive disorder with psychotic features. [AR at 430.] In June 2011, Dr. Parsa assessed
4 plaintiff with mood disorder, not otherwise specified, anxiety disorder, not otherwise specified, and
5 panic disorder with agoraphobia. [AR at 425.]

6 On August 12, 2011, Dr. Parsa completed a Mental Impairment Questionnaire. [AR at 440-
7 46.] In that questionnaire, Dr. Parsa diagnosed plaintiff with mood disorder, NOS, anxiety
8 disorder, NOS, and panic disorder with agoraphobia, and also indicated that plaintiff had a global
9 assessment of functioning (“GAF”)⁵ score of 50-55.⁶ [AR at 440.] Dr. Parsa identified the following
10 signs and symptoms associated with the diagnoses: weight change; sleep disturbance; mood
11 disturbance; emotional lability; perceptual disturbances (“sees shadows”); social withdrawal or
12 isolation; delusions or hallucinations (“[t]hinks people are watching her”); substance dependence;
13 recurrent panic attacks; paranoia or inappropriate suspiciousness; persistent irrational fears;
14 generalized persistent anxiety; and hostility and irritability. [AR at 440-41.] Dr. Parsa described
15 the clinical findings as “[a]nxiety around people, isolating herself for that reason.” [AR at 441.] On
16 August 12, 2011, Dr. Parsa also completed a Medical Source Statement (Mental) form. [AR at
17 447.] In that form, Dr. Parsa indicated plaintiff’s diagnoses of mood disorder, not otherwise
18 specified, anxiety disorder, not otherwise specified, and panic disorder with agoraphobia. [Id.]
19 In both forms, Dr. Parsa assessed plaintiff’s functional work-related limitations. The ALJ gave
20 “partial weight” to Dr. Parsa’s opinion “to the extent County Behavioral Health records support [the

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22 ⁵ A GAF score is the clinician’s judgment of the individual’s overall level of functioning. It is rated
23 with respect only to psychological, social, and occupational functioning, without regard to impairments
24 in functioning due to physical or environmental limitations. Diagnostic and Statistical Manual of Mental
25 Disorders 32 (4th ed. 2000) (“DSM-IV”). The most recent edition of the DSM “dropped” the GAF scale,
26 citing its “conceptual lack of clarity” and “questionable psychometrics in routine practice.” Diagnostic
27 and Statistical Manual of Mental Disorders 16 (5th ed. 2012).

28 ⁶ A GAF score in the range of 51-60 indicates moderate symptoms or moderate difficulty in
social, occupational, or school functioning (e.g., few friends, conflicts with peers or coworkers). DSM-
IV 34. A GAF score in the range of 41-50 indicates serious symptoms (e.g., suicidal ideation,
obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school
functioning (e.g., no friends, unable to keep a job). DSM-IV 34.

1 RFC].” [AR at 24.] Otherwise, the ALJ found Dr. Parsa’s findings internally “inconsistent”:

2 On one hand, [Dr. Parsa] reported moderate to marked limitations in work-related
3 mental abilities, yet on the other hand, he reported [plaintiff] had at least partial
4 response to medication, and “good” ability to understand, remember and carry out
5 very short and simple instructions, and adhere to basic standards of neatness and
6 cleanliness. She likewise had “fair” capacity to remember work-like procedures,
7 maintain attention for 2-hour increments, maintain regular attendance and be
8 punctual with in [sic] customary[,] usually strict tolerances, sustain an ordinary
9 routine without special supervision, work in coordination with or proximity to others
10 without being distracted by them, complete a normal workday and workweek without
11 interruptions from psychologically based symptoms, ask simple questions or request
12 assistance, get along with coworkers or peers without unduly distracting them, and
13 in several other areas. She further had “fair” abilities and aptitudes required to
14 perform semiskilled and unskilled work, yet poor to no capacity to interact
15 appropriately with the general public and maintain socially appropriate behavior.
16 She had only slight restriction of activities of daily living, often deficiencies of
17 concentration, persistence or pace, marked difficulties in maintaining social
18 functioning, and repeated episodes of deterioration or decompensation in work or
19 work like settings. Dr. Parsa opined [plaintiff] would be absent from work about 3
20 times a month on average due to impairments or treatment.

21 [AR at 21-22 (citations omitted).] The ALJ also noted that the Ventura County Behavioral Health
22 treatment records showed the following:

23 [Plaintiff] improved when she was compliant with prescribed medical treatment,
24 including adherence to medication requirements and attendance in therapy.
25 However, she did not appear to attend therapy on a timely basis, as she was
26 repeatedly advised to attend group and individual therapy and the previous and
27 current medical record shows “no-shows” for scheduled therapy appointments. In
28 June 2010, she specifically reported improvement on Celexa.

29 [AR at 24.] The ALJ gave “persuasive weight” [id.] to the opinion of consultative examiner Minh-
30 Khoi Duong, M.D., who opined that plaintiff had no functional limitations as a result of her mood
31 disorder, NOS [AR at 340], and to the opinion of non-examining medical consultant Preston Davis,
32 Psy.D., who opined that plaintiff had mild functional limitations and no severe impairment. [AR at
33 350, 352.]

34 The Court concludes that the ALJ’s finding that Dr. Parsa’s findings were inconsistent is not
35 supported by substantial evidence. Dr. Parsa’s finding of moderate to marked limitations in work-
36 related mental abilities is not necessarily inconsistent with plaintiff’s partial response to medication,
37 ability to understand, remember, and carry out very short and simple instructions, ability to keep
38 neat and clean, and “fair” abilities, i.e., “significantly limited but not precluded,” in nineteen out of

1 twenty-five areas of workplace functioning. [AR at 441, 443-45, 447, 449.] Similarly, significantly
2 limited abilities and aptitudes to perform semiskilled and unskilled work is not necessarily
3 inconsistent with a “poor” ability -- defined as “[n]o useful ability to function” [AR at 449] -- to
4 interact appropriately with the general public, and maintain socially appropriate behavior. [AR at
5 444-45, 449.] Other than this conclusory finding of internal inconsistency, the ALJ failed to
6 specifically explain *how* Dr. Parsa’s findings were inconsistent. Accordingly, this was not a specific
7 and legitimate reason for rejecting Dr. Parsa’s treating opinion. See Day v. Weinberger, 522 F.2d
8 1154, 1156 (9th Cir. 1975) (an ALJ is not permitted to reach a conclusion “simply by isolating a
9 specific quantum of supporting evidence.”).

10 The Commissioner argues that the ALJ “accepted some limitations” consistent with Dr.
11 Parsa’s opinion, when she included RFC limitations to simple, repetitive tasks, with no greater than
12 occasional interaction with supervisors, coworkers, and the public, and no high-paced production
13 quotas. [Opp’n at 4 (citing AR at 23).] However, while this may be consistent with the ALJ giving
14 Dr. Parsa’s opinion “partial weight,” it does not solve the issue of the ALJ’s implicit rejection of
15 portions of Dr. Parsa’s opinion without identifying those portions she rejected, or providing specific
16 and legitimate reasons supported by substantial evidence for that rejection. See Carmickle, 533
17 F.3d at 1164.

18 The ALJ also noted that the Ventura County Behavioral Health treatment records show
19 improvement when plaintiff complied with prescribed medical treatment. [AR at 21, 24.] However,
20 an ALJ must consider all of the relevant evidence in the record and may not point to only those
21 portions of the records that bolster her findings. See, e.g., Holohan v. Massanari, 246 F.3d 1195,
22 1207-08 (9th Cir. 2001) (holding that an ALJ cannot selectively rely on some entries in plaintiff’s
23 records while ignoring others). As the Ninth Circuit recently explained, “[c]ycles of improvement
24 and debilitating symptoms are a common occurrence, and in such circumstances it is error for an
25 ALJ to pick out a few isolated instances of improvement over a period of months or years and to
26 treat them as a basis for concluding a claimant is capable of working.” Garrison, 759 F.3d 995,
27 1017 (citing Holohan, 246 F.3d at 1205); see also Scott v. Astrue, 647 F.3d 734, 739-40 (7th Cir.

1 2011) (citations omitted) (“There can be a great distance between a patient who responds to
2 treatment and one who is able to enter the workforce, and that difference is borne out in Dr. Tate’s
3 treatment notes. Those notes show that although Scott had improved with treatment, she
4 nevertheless continued to frequently experience bouts of crying and feelings of paranoia. The ALJ
5 was not permitted to ‘cherry-pick’ from those mixed results to support a denial of benefits.”). Thus,
6 “[r]eports of ‘improvement’ in the context of mental health issues must be interpreted with an
7 understanding of the patient’s overall well-being and the nature of her symptoms.” Garrison, 759
8 F.3d at 1017 (citing Ryan, 528 F.3d at 1200-01); see also Holohan, 246 F.3d at 1205 (“[The
9 treating physician’s] statements must be read in context of the overall diagnostic picture he draws.
10 That a person who suffers from severe panic attacks, anxiety, and depression makes some
11 improvement does not mean that the person’s impairments no longer seriously affect her ability
12 to function in a workplace.”). Here, plaintiff continued to report ups and downs, auditory
13 hallucinations, and panic attacks, even when she was compliant with treatment. [See, e.g., AR
14 at 438-39, 452, 454.] Indeed, on the same date that she reported that Celexa was helping her,
15 she also reported that she had heard voices a few days prior telling her to harm her girlfriend. [AR
16 at 439.] Accordingly, the fact that treatment records show some improvement is not a specific and
17 legitimate reason, supported by substantial evidence, for rejecting a portion of Dr. Parsa’s opinion.

18 Based on the foregoing, the ALJ did not provide specific and legitimate reasons supported
19 by substantial evidence for giving Dr. Parsa’s opinion only “partial weight.” Remand is warranted
20 on this issue.⁷

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26 ⁷ To the extent plaintiff argues that the ALJ “erred in asserting Dr. Parsa only treated plaintiff
27 for two months,” and noted that Dr. Parsa did not consider the impact of substance abuse in
28 rendering her opinion [PB at 3-6], plaintiff’s argument fails. Although these findings were made
in the original 2011 decision [AR at 136], the ALJ did not make or adopt those findings in the April
2013 decision.

1 **B. PLAINTIFF’S RESIDUAL FUNCTIONAL CAPACITY AND HER ABILITY TO PERFORM**
2 **THE JOBS CITED BY THE VOCATIONAL EXPERT**

3 Plaintiff argues that the “RFC finding does not encompass all limitations supported by the
4 record and is not supported by substantial evidence.” [PB at 6-7.] She argues that the ALJ erred
5 by not including Dr. Parsa’s opinions in the RFC, and by including the opinions of Dr. Duong and
6 Dr. Davis, which do not support the ALJ’s RFC finding. [PB at 7-8.] Therefore, plaintiff argues,
7 the hypothetical to the VE was inadequate and cannot be relied upon. [PB at 8.]

8 In determining a claimant’s disability status, an ALJ has the responsibility to determine the
9 claimant’s RFC after considering “all of the relevant medical and other evidence” in the record. 20
10 C.F.R. §§ 416.945(a)(3), 416.946(c). “Thus, an RFC that fails to take into account a claimant’s
11 limitations is defective.” Valentine, 574 F.3d at 690. Similarly, “[t]he hypothetical an ALJ poses
12 to a vocational expert, which derives from the RFC, ‘must set out all the limitations and restrictions
13 of the particular claimant.’” Id. (citing Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir. 1988)
14 (emphasis in original)). See also Nguyen v. Chater, 100 F.3d 1462, 1466 n.3 (9th Cir. 1996)
15 (“Because the hypothetical was incomplete, it does not constitute competent evidence to support
16 a finding that claimant could do jobs set forth by the vocational expert.”).

17 Because the case is being remanded for reconsideration of Dr. Parsa’s opinion, which may
18 affect the ALJ’s findings regarding the functional limitations resulting from plaintiff’s impairments,
19 on remand the ALJ shall also reconsider plaintiff’s RFC.

20 Plaintiff also contends that the ALJ erred in relying on the opinions of Dr. Duong and Dr.
21 Davis to determine her RFC because neither Dr. Duong nor Dr. Davis reviewed plaintiff’s medical
22 records prior to rendering their opinions. [PB at 7-8.] The ALJ gave the opinions “persuasive
23 weight,” finding them “credible” and “based on supportability with medical signs and laboratory
24 findings; consistency with the record; and areas of specialization.” [AR at 24.] Here, the opinions
25 of Dr. Duong and Dr. Davis were formulated before plaintiff started seeing a psychiatrist [AR at
26 338], and without reviewing any of plaintiff’s treatment records, including the records from Ventura
27 County Behavioral Health. As such, Dr. Duong’s examination is little more than a “snapshot”
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1 assessment of plaintiff's condition at the point in time in September 2009 that she presented to
2 him for evaluation. See Rodriguez v. Colvin, 2014 WL 5305722, at *2 (C.D. Cal. Oct. 15, 2014)
3 (holding that where plaintiff's condition was such that her symptoms would wax and wane, "the
4 results of a single examination by a consultant cannot stand as substantial evidence, for they
5 reveal only what took place on that date," and noting that "if ever there was a value to the notion
6 of relying on a longitudinal relationship -- the kind a treating physician enjoys with his patient, and
7 one reason that opinions of treating physicians are given greater weight than opinions of
8 consultants . . . it is with a disease that manifests itself differently over time") (citing Garrison, 759
9 F.3d at 1017). In addition, the ALJ failed to state how the opinions of Dr. Duong and Dr. Davis
10 were supported by medical signs and laboratory findings, and how they were consistent with the
11 record.

12 Based on the foregoing, the ALJ shall reconsider plaintiff's RFC, and shall determine, at
13 step five, with the assistance of a VE if necessary, whether there are jobs existing in significant
14 numbers in the national economy that plaintiff can still perform. Remand is warranted on this
15 issue.

17 **C. THE ALJ'S CONSIDERATION OF LAY WITNESS TESTIMONY**

18 On remand, the ALJ was directed to address the third-party report of plaintiff's friend,
19 Tyasha Johnson. [AR at 144.] Plaintiff argues that the ALJ failed to properly assess the
20 statements of Ms. Johnson.⁸ [PB at 8-9.] The Court agrees.

21 "In addition to evidence from . . . medical sources, . . . [an ALJ] may also use evidence from
22 other sources to show the severity of [a claimant's] impairment(s) and how it affects [her] ability
23 to work." 20 C.F.R. § 416.913(d). Such other sources include "spouses, parents and other
24 caregivers, siblings, other relatives, friends, neighbors and clergy." Id. Thus, "[d]escriptions by
25 friends and family members in a position to observe a claimant's symptoms and daily activities

27 ⁸ Ms. Johnson is referred to as "Ms. Jackson" in Plaintiff's Brief [PB at 8], but the record indicates
28 that the witness' name is Tyasha Johnson. [AR at 82-83, 275.]

1 have routinely been treated as competent evidence.” Sprague v. Bowen, 813 F.2d 1226, 1232
2 (9th Cir. 1987). An ALJ may reject lay testimony only for specific reasons germane to each
3 witness. Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir. 1993).

4 Ms. Johnson testified on April 15, 2013, that she had been living with and taking care of
5 plaintiff for nine years. [AR at 83.] She testified, among other things, that plaintiff “gets really
6 depressed,” cannot accept criticism, hears voices, deliberately “cuts” herself about once a month,
7 and experiences mood swings. [AR at 84-89.] In a July 12, 2009, Function Report -- Adult -- Third
8 Party, Ms. Johnson indicated that plaintiff has sleeping problems [AR at 276-77]; watches
9 television for a few hours in the day [AR at 279]; goes to the store once a week, but needs
10 someone to accompany her [id.]; and cannot pay attention. [AR at 280.]

11 The ALJ noted that “[r]esponses to a third-party report in July 2009 by [plaintiff]’s girlfriend,
12 Tyasha Johnson, corroborate the allegations of [plaintiff].” [AR at 20.] The ALJ summarized Ms.
13 Johnson’s Function Report, noting that Ms. Johnson indicated that plaintiff was “significantly
14 limited on a daily basis.” [AR at 20-21.] The ALJ also summarized Ms. Johnson’s testimony. [AR
15 at 25.]

16 As plaintiff argues, the ALJ did not provide any specific reasons for discounting Ms.
17 Johnson’s oral and written testimony. [PB at 8-9.] The Commissioner argues that the ALJ made
18 a finding that Ms. Johnson’s testimony was similar to plaintiff’s testimony, and since the ALJ’s
19 analysis of plaintiff’s credibility was “sufficient,” “then the ALJ’s analysis of Ms. Johnson’s
20 testimony was sufficient.” [Opp’n at 6-7.]

21 While an ALJ may reject lay testimony that was similar to a claimant’s testimony if the ALJ
22 expressly stated that she rejected the lay witness’ testimony for the same reasons that she had
23 rejected the plaintiff’s testimony (Valentine, 574 F.3d at 693-94), here, the ALJ did not specifically
24 provide that reason to discount Ms. Johnson’s testimony. “Long-standing principles of
25 administrative law require [this Court] to review the ALJ’s decision based on the reasoning and
26 factual findings offered by the ALJ -- not *post hoc* rationalizations that attempt to intuit what the
27 adjudicator may have been thinking.” Bray v. Comm’r of Soc. Sec. Admin., 554 F.3d 1219, 1225-

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1 26 (9th Cir. 2009) (citing SEC v. Chenery Corp., 332 U.S. 194, 196 (1947)).

2 Accordingly, the ALJ failed to give any reasons to discount Ms. Johnson's lay witness
3 testimony. The ALJ on remand must reassess the oral and written testimony of Ms. Johnson and,
4 if applicable, provide germane reasons for discounting her testimony. Remand is warranted on
5 this issue.

6
7 **D. CREDIBILITY**

8 Plaintiff contends the ALJ improperly discredited her testimony. [PB at 9.]

9 "To determine whether a claimant's testimony regarding subjective pain or symptoms is
10 credible, an ALJ must engage in a two-step analysis." Lingenfelter v. Astrue, 504 F.3d 1028,
11 1035-36 (9th Cir. 2007). "First, the ALJ must determine whether the claimant has presented
12 objective medical evidence of an underlying impairment 'which could reasonably be expected to
13 produce the pain or other symptoms alleged.'" Id. at 1036 (quoting Bunnell v. Sullivan, 947 F.2d
14 341, 344 (9th Cir. 1991) (en banc)). Second, if the claimant meets the first test, the ALJ may
15 reject the claimant's testimony about the severity of his symptoms "only upon (1) finding evidence
16 of malingering, or (2) expressing clear and convincing reasons for doing so." Benton v. Barnhart,
17 331 F.3d 1030, 1040 (9th Cir. 2003). Factors to be considered in weighing a claimant's credibility
18 include: (1) the claimant's reputation for truthfulness; (2) inconsistencies either in the claimant's
19 testimony or between the claimant's testimony and his conduct; (3) the claimant's daily activities;
20 (4) the claimant's work record; and (5) testimony from physicians and third parties concerning the
21 nature, severity, and effect of the symptoms of which the claimant complains. See Thomas v.
22 Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002); see also Ghanim, 763 F.3d at 1163; 20 C.F.R. §
23 416.929(c).

24 Where, as here, plaintiff has presented evidence of an underlying impairment, and the ALJ
25 did not find "affirmative evidence" of malingering [see generally AR at 25-26], the ALJ's reasons
26 for rejecting a claimant's credibility must be specific, clear and convincing. Burrell v. Colvin, 775
27 F.3d 1133, 1140 (9th Cir. 2014) (citing Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012)).

1 “General findings [regarding a claimant’s credibility] are insufficient; rather, the ALJ must identify
2 what testimony is not credible and what evidence undermines the claimant’s complaints.” Id. at
3 1138 (quoting Lester, 81 F.3d at 834) (internal quotation marks omitted). The ALJ’s findings “must
4 be sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the claimant’s
5 testimony on permissible grounds and did not arbitrarily discredit a claimant’s testimony regarding
6 pain.” Bunnell, 947 F.2d at 345-46 (citation and internal quotation marks omitted). A “reviewing
7 court should not be forced to speculate as to the grounds for an adjudicator’s rejection of a
8 claimant’s allegations of disabling pain.” Id. at 346. As such, an “implicit” finding that a plaintiff’s
9 testimony is not credible is insufficient. Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir. 1990) (per
10 curiam).

11 Here, the ALJ found plaintiff’s allegations “partially credible,” but “not credible to the extent
12 of establishing disability”:

13 [Plaintiff] has continued to disregard medical advice by failing to exercise on a
14 regular basis, despite her allegations of disabling obesity and knee pain. In addition,
15 she continues to fail appointments, labeled as “no-shows”, and has allowed herself
16 to run out of psychiatric medication as late as January 2013. [Plaintiff]’s history of
17 noncompliance with medical advice is well established, based on the previous
18 decision noting her failure to attend group therapy, and her failure to attend
19 individual therapy, with practitioner Dennis Wadson, who was specifically
20 recommended. Importantly, as previously discussed, was the fact that when she
21 was compliant with prescribed treatment, her mental health improved. Therefore,
22 repeated noncompliance with medical advice has contributed greatly to any relapses
23 of her condition. Her credibility is further brought into question based on
24 inconsistencies in the record, such as her report to the consultative examiner that
25 she had only a 7th grade education, and her earlier report to treating sources that
26 she had a GED. Such inconsistency, considered together with her long history of
27 criminal offenses and incarceration, tend to diminish the veracity of her allegations.

28 Despite her testimony at the first hearing and her current testimony describing
excessive sleep, sometimes sleeping up to 14 hours per day, [plaintiff] reported to
the consultative examiner she independently performed all self-care activities of
daily living, and her activities of daily living were otherwise unaffected by psychiatric
problems. Treating source progress notes in June 2010 further reflect she was
independent in activities of daily living. While not controlling, these activities are
generally inconsistent with disability and consistent with the ability to perform work.
Moreover, in contrast to her testimony at the previous and current hearing regarding
sleeping for days at a time, treating source records in Exhibit 8F suggest much
higher functioning, with only vague descriptions of auditory hallucinations. At the
current hearing, she admitted no longer having auditory hallucinations for
approximately 1 year. This is consistent with the discussion in the previous decision
of the record showing hallucinations stopped when she was medication compliant.
Despite her previous and current testimony of debilitating side effects from

1 medication, there is no clear documentation of sedation side effects, although there
2 is minimal mention of back spasms and weight gain with Trazodone. Nonetheless,
3 as discussed above, despite medication adjustments with documented
4 improvement, there are several instances when she unjustifiably stopped taking
5 medication because she was “depressed”, or she simply allowed herself to run out
6 of medication.

7 [AR at 25-26 (citations omitted).]

8
9 Having carefully reviewed the record, the Court concludes that the ALJ’s credibility
10 determination is not supported by substantial evidence.

11 **1. Noncompliance with Medical Advice**

12 In determining a claimant’s credibility, an ALJ may consider an “unexplained or
13 inadequately explained” failure to follow a prescribed course of treatment.⁹ See Molina, 674 F.3d
14 at 1112; see also id. at 1113-14 (“[Plaintiff]’s failure to assert a good reason for not seeking
15 treatment, or a finding by the ALJ that the proffered reason is not believable, can cast doubt on
16 the sincerity of [plaintiff]’s . . . testimony.”).

17 Here, the ALJ noted that the record indicates plaintiff “continues to fail appointments.” [AR
18 at 25.] The treatment records do indicate instances where plaintiff did not show up for her
19 scheduled appointments in January 2011, September 2011, August 2012, November 2012, and
20 February 2013.¹⁰ [See, e.g., AR at 429, 451, 457-59, 461.] However, plaintiff testified as to the
21 difficulty she has getting to her appointments, i.e., because she is scared to leave the house, she
22 has to schedule her appointments when Ms. Johnson can go with her. [AR at 75.] Additionally,
23 from September 2009 through January 2013, plaintiff presented at approximately twenty-one
24 appointments [see AR at 420-62], missing only five -- and may have been incarcerated for at least

25 ⁹ To the extent the ALJ finds that plaintiff’s failure to exercise on a regular basis in order to
26 lose weight impacts on her credibility [see AR at 25 (“P]laintiff has continued to disregard medical
27 advice by failing to exercise on a regular basis despite her allegations of disabling obesity and
28 knee pain”)], this reason is not persuasive. See, e.g., Orn, 495 F.3d at 637-38 (a claimant’s
“failure to follow treatment for obesity tells us little or nothing about a claimant’s credibility”).

¹⁰ The Court notes that plaintiff was incarcerated at the time of the March 4, 2013, hearing, but
there is no indication in the record when plaintiff began that incarceration. [AR at 97.]

1 one of the appointments she failed to attend. [See supra note 9.] Accordingly, this was not a clear
2 and convincing reason for discounting plaintiff's credibility.

3 The ALJ also noted that plaintiff failed to attend group and individual therapy, even though
4 therapy was recommended. [AR at 25.] The treatment records indicate referrals to therapy in
5 December 2009 [AR at 363], June 2010 [AR at 439], and April 2011 [AR at 426], and that plaintiff
6 had not attended therapy as encouraged in December 2010. [AR at 432.] However, a July 2010
7 treatment record indicates that plaintiff should "continue group therapy" [AR at 438], and a January
8 28, 2011, treatment record indicates that plaintiff "wants to continue group therapy," and that she
9 left therapy because she became homeless. [AR at 428.] At the hearing in August 2011, plaintiff
10 testified that besides seeing Dr. Parsa at Ventura County Behavioral Health, she had been seeing
11 a therapist there once a month "for the last couple of years." [AR at 107.] Thus, the record
12 indicates that plaintiff attended therapy at times, and may have temporarily left therapy primarily
13 due to her living situation. Accordingly, this was not a clear and convincing reason for discounting
14 plaintiff's credibility.

15 The ALJ further noted that when plaintiff was compliant with her medication, her mental
16 health improved. [AR at 25 (citing AR at 439).] The effectiveness of a claimant's medications is
17 a proper reason to evaluate the credibility of a claimant's allegations concerning her subjective
18 symptoms. See Bunnell, 947 F.2d at 346 (quoting Social Security Ruling ("SSR")¹¹ 83-13). Here,
19 in support of her finding that plaintiff's mental health improved when plaintiff was compliant with
20 her medication, the ALJ cited a treatment record that states, "Celexa is helping me." [AR at 25,
21 439.] The ALJ misstates the record and her reason is not supported by substantial evidence. See
22 Lingenfelter, 504 F.3d at 1036 (explaining that reasons for discrediting plaintiff that misstate the
23 record "provide[] no support for the [ALJ's] credibility finding []"); Reddick, 157 F.3d at 722-23 ("In
24 essence, the ALJ developed his evidentiary basis by not fully accounting for the context of
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26 ¹¹ "SSRs do not have the force of law. However, because they represent the Commissioner's
27 interpretation of the agency's regulations, we give them some deference. We will not defer to SSRs
28 if they are inconsistent with the statute or regulations." Holohan, 246 F.3d at 1202 n.1 (internal
citations omitted).

1 materials or all parts of the testimony and reports. His paraphrasing of record material is not
2 entirely accurate regarding the content or tone of the record.”). For example, in the record cited
3 by the ALJ, plaintiff also reported that she heard voices two days earlier telling her to harm her
4 girlfriend. [AR at 439.] At her next appointment, plaintiff reported that she was “still up and down,”
5 and complained of feeling anxious. [AR at 438.] A review of the record as a whole reveals that,
6 despite brief periods of improvement due to medication, plaintiff continued to experience
7 symptoms including panic attacks, anxiety, racing thoughts, low sleep need, and fatigue. [AR at
8 362-63, 431, 433.] See also Holohan, 246 F.3d at 1205 (“That a person . . . makes some
9 improvement does not mean that the person’s impairments no longer seriously affect her ability
10 to function in a workplace.”); Garrison, 759 F.3d 995, 1017 (error for an ALJ to pick out a few
11 isolated instances of improvement over a period of months or years and to treat them as a basis
12 for concluding a claimant is capable of working). Thus, the ALJ’s finding that plaintiff’s mental
13 health improved when she was compliant with her medication is not supported by substantial
14 evidence and is not a clear and convincing reason for rejecting plaintiff’s credibility.

15

16 **2. Inconsistent Statements and Criminal History**

17 The ALJ discounted plaintiff’s credibility based on inconsistent statements about her
18 education and plaintiff’s lengthy criminal history. [AR at 25.] “In assessing the claimant’s
19 credibility, the ALJ may use ordinary techniques of credibility evaluation, such as considering the
20 claimant’s reputation for truthfulness and any inconsistent statements in her testimony.”
21 Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir. 2001). Regarding plaintiff’s statements about
22 her education, the ALJ noted that plaintiff told the consultative examiner that she had only a
23 seventh grade education, whereas she told her treating physician that she had a GED.¹² [Id.
24 (citing AR at 376).] The Commissioner argues that the statements are inconsistent “because they
25 relate to overall level of education.” [Opp’n at 9.] However, the Court agrees with plaintiff, who
26 argues that reports of having a seventh grade education do not necessarily contradict reports of

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28 ¹² The Court notes that plaintiff testified that she completed eighth grade. [AR at 104.]

1 earning a GED. [PB at 10.]

2 Regarding plaintiff's criminal history, plaintiff had a "long history of criminal offenses and
3 incarceration." [AR at 25.] Plaintiff testified that she was in prison from 1996 until 2005 for
4 transporting drugs, robbery, petty theft, and assault. [AR at 104, 338.] A progress note dated
5 October 26, 2010, indicates that plaintiff was in jail for forty-five days for domestic violence, after
6 she got into a fight with her girlfriend. [AR at 425, 434, 456.] Another progress note, this one
7 dated June 10, 2011, indicates that plaintiff got in a fight with her girlfriend, the police "took her,"
8 and she "needs to go to court." [AR at 425.] According to plaintiff's counsel, plaintiff was in prison
9 for an unknown offense at the time of her hearing in March 2013. [AR at 97.] An ALJ may rely
10 upon a claimant's convictions for crimes of moral turpitude as part of a credibility determination.
11 Albidrez v. Astrue, 504 F. Supp. 2d 814, 822 (C.D. Cal. 2007) (in making a credibility
12 determination, ALJ's reliance on prior felony convictions is limited to convictions involving moral
13 turpitude); see also Hardisty v. Astrue, 592 F.3d 1072, 1080 (9th Cir. 2010) (in ruling on an Equal
14 Access to Justice Act request, the court held the ALJ's credibility determination was substantially
15 justified when it was based, *among other factors*, on the claimant's prior criminal convictions).

16 Here, the ALJ only found that plaintiff had a "long history of criminal offenses and
17 incarceration," which "considered together" with plaintiff's inconsistent statement regarding her
18 education level, tended to "diminish the veracity of her allegations." [AR at 25.] The ALJ did not
19 specifically find that plaintiff's criminal convictions involved crimes of moral turpitude. Moreover,
20 the Court has already rejected the ALJ's attempt to discount plaintiff's credibility based on the
21 alleged inconsistencies in her statements regarding her education level. Thus, this is not a case
22 where the "government's adverse credibility finding was substantially justified because *all of the*
23 *inferences upon which it rested had substance in the record*," Hardisty, 592 F.3d at 1080
24 (emphasis added), and, standing alone, the Court finds that the ALJ's general reliance on plaintiff's
25 criminal history, without more, does not provide a specific, clear and convincing reason for
26 discounting plaintiff's credibility.

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1 **3. Activities of Daily Living**

2 The ALJ discounted plaintiff’s credibility based on her independence in activities of daily
3 living. [AR at 25-26.] The ALJ noted that plaintiff reported to the consultative examiner that “she
4 independently performed all self-care activities of daily living, and her activities of daily living were
5 otherwise unaffected by psychiatric problems.” [AR at 25 (citing AR at 339).] The ALJ also noted
6 that treatment records in June 2010 “reflect she was independent in activities of daily living.” [AR
7 at 25-26 (citing AR at 432).] The ALJ also noted that “treating source records in Exhibit 8F
8 suggest much higher functioning.” [AR at 26.]

9 An ALJ may discredit testimony when the claimant reports participation in everyday
10 activities indicating capacities that are transferable to a work setting. Molina, 674 F.3d at 1113.
11 However, “[e]ven where those activities suggest some difficulty functioning, they may be grounds
12 for discrediting [plaintiff]’s testimony to the extent that they contradict claims of a totally debilitating
13 impairment.” Id. (citing Turner, 613 F.3d at 1225; Valentine, 574 F.3d at 693).

14 With respect to her daily activities, plaintiff testified to the following: she stays at home “all
15 day” because she is scared of getting panic attacks when she goes out; she goes out three or four
16 times a month; when she goes out, she is accompanied by Ms. Johnson; her medications make
17 her hungry and tired; she sleeps about 14 hours a day; she watches TV “all day long”; and she
18 can focus on something for ten minutes. [AR at 73-77.] In the Function Report -- Adult, plaintiff
19 indicated that her friend helps her bathe and cooks for plaintiff; plaintiff needs reminders to take
20 her medication; she uses public transportation; she is afraid to go out by herself; she shops once
21 a week for food; she has lost interest in social activities; and she “can’t” pay attention. [AR at 267-
22 72.]

23 The ALJ relied on the statement by the consultative examiner that plaintiff could
24 independently perform self-care activities of daily living, i.e., she could “eat, sleep, dress, bathe
25 herself, and use the restroom,” and that “[o]therwise, [plaintiff]’s activities of daily living are
26 unaffected by psychiatric reasons.” [AR at 25-26, 339.] First, the Court finds that this statement
27 is confusing and ambiguous, as it seems to imply that some of plaintiff’s activities of daily living
28

1 somehow *may be* affected by “psychiatric reasons.” Second, other than her conclusory statement
2 that plaintiff’s activities of daily living are “consistent with the ability to perform work,” the ALJ fails
3 to provide any analysis as to how this is so, or even to specify which activities she finds to be
4 consistent with which work-related tasks. Molina, 674 F.3d at 1113; Burrell, 774 F.3d at 1138.
5 Third, the Court finds that the ALJ also failed to identify specific evidence in Exhibit 8F that was
6 suggestive of plaintiff being “much higher functioning.” See Gonzalez v. Sullivan, 914 F.2d 1197,
7 1201 (9th Cir. 1990) (holding that daily activities may not be relied upon to support an adverse
8 credibility determination unless the ALJ makes an explicit finding that plaintiff’s ability to perform
9 those activities translated into the ability to perform appropriate work activities on an ongoing and
10 daily basis). In fact, Exhibit 8F generally indicates that plaintiff was arrested for getting into a fight
11 with her girlfriend, thought people were watching her, saw shadows, complained of panic attacks,
12 reported binge eating and purging, slept 2-5 hours a night, experienced racing thoughts, reported
13 feeling depressed, reported that she relapsed on alcohol and became aggressive with her
14 girlfriend, was “up and down,” and heard voices. [AR at 425-27, 430-31, 434-35, 438-39.]

15 Accordingly, this was not a specific, clear and convincing reason for discounting plaintiff’s
16 credibility.

17 18 **4. Conclusion**

19 In sum, the Court finds that the ALJ failed to provide specific, clear and convincing reasons
20 to discount plaintiff’s credibility. Accordingly, remand is warranted on this issue.

21 22 **VI.**

23 **REMAND FOR FURTHER PROCEEDINGS**

24 The Court has discretion to remand or reverse and award benefits. McAllister v. Sullivan,
25 888 F.2d 599, 603 (9th Cir. 1989). Where no useful purpose would be served by further
26 proceedings, or where the record has been fully developed, it is appropriate to exercise this
27 discretion to direct an immediate award of benefits. See Lingenfelter, 504 F.3d at 1041; Benecke

1 v. Barnhart, 379 F.3d 587, 595-96 (9th Cir. 2004). Where there are outstanding issues that must
2 be resolved before a determination can be made, and it is not clear from the record that the ALJ
3 would be required to find plaintiff disabled if all the evidence were properly evaluated, remand is
4 appropriate. See Benecke, 379 F.3d at 593-96.

5 In this case, as discussed above, the ALJ failed to provide legally sufficient reasons for
6 discounting the opinion of plaintiff's treating psychiatrist, for discounting the third-party testimony
7 of Ms. Johnson, and for discounting plaintiff's credibility. It is not clear from the record if a finding
8 of disability would be required if this evidence were properly evaluated. Remand is appropriate.

9 In an effort to expedite these proceedings and to avoid any confusion or misunderstanding
10 as to what the Court intends, the Court will set forth the scope of the remand proceedings. First,
11 because the ALJ failed to provide specific and legitimate reasons for discounting the opinion of
12 plaintiff's treating psychiatrist, the ALJ on remand shall reassess the opinion of Dr. Parsa. In
13 assessing the medical opinion evidence, the ALJ must provide legally adequate reasons for any
14 portion of the opinion that the ALJ discounts or rejects, including a legally sufficient explanation
15 for crediting one doctor's opinion over any of the others. Second, because the ALJ failed to
16 provide germane reasons for discounting the third-party testimony of Ms. Johnson, the ALJ on
17 remand shall reassess Ms. Johnson's testimony and either credit her testimony as true or provide
18 germane reasons for discounting or rejecting her testimony. Third, because the ALJ failed to
19 provide specific, clear and convincing reasons to discount plaintiff's credibility, the ALJ on remand
20 shall reassess plaintiff's subjective symptom allegations and either credit her testimony as true,
21 or provide specific, clear and convincing reasons, supported by substantial evidence in the case
22 record, for discounting or rejecting any testimony. Next, if necessary, the ALJ shall reconsider all
23 of plaintiff's limitations in making the RFC determination. Finally, the ALJ shall determine, at step
24 five, with the assistance of a VE if necessary, whether there are jobs existing in significant
25 numbers in the national economy that plaintiff can still perform.¹³

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27 ¹³ Nothing herein is intended to disrupt the ALJ's step four finding that plaintiff has no past
28 relevant work.

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VII.

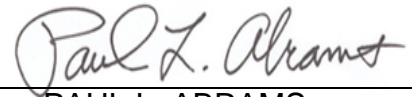
CONCLUSION

IT IS HEREBY ORDERED that: (1) plaintiff's request for remand is **granted**; (2) the decision of the Commissioner is **reversed**; and (3) this action is **remanded** to defendant for further proceedings consistent with this Memorandum Opinion.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment herein on all parties or their counsel.

This Memorandum Opinion and Order is not intended for publication, nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

DATED: APRIL 29, 2015



PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE