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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 MELISSA R.,<sup>1</sup>

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting  
15 Commissioner of Social Security,

16 Defendant.  
17

Case No. 2:17-cv-07716-AFM

18  
19 **MEMORANDUM OPINION AND**  
20 **ORDER REVERSING AND**  
21 **REMANDING DECISION OF**  
22 **COMMISSIONER**

23  
24 Plaintiff filed this action seeking review of the Commissioner's final decision  
25 denying her application for disability insurance benefits. In accordance with the  
26 Court's case management order, the parties have filed memorandum briefs  
27 addressing the merits of the disputed issues. The matter is now ready for decision.

28 **BACKGROUND**

On September 17, 2014, Plaintiff applied for supplemental security income,  
alleging disability since June 15, 2014. Plaintiff's application was denied.

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<sup>1</sup> Plaintiff's name has been partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 (Administrative Record [“AR”] 68-71.) A hearing took place on October 6, 2016  
2 before an Administrative Law Judge (“ALJ”), at which both Plaintiff, who was  
3 represented by counsel, and a vocational expert (“VE”) testified. (AR 33-53.)

4 In a decision dated December 7, 2016, the ALJ found that Plaintiff suffered  
5 from the severe impairments of obesity and bipolar disorder. (AR 21.) As relevant  
6 here, the ALJ concluded that Plaintiff retained the residual functional capacity  
7 (“RFC”) to perform simple and routine work with a reasoning level of two and with  
8 occasional contact with coworkers and the public. (AR 22.) Relying upon the  
9 testimony of the VE, the ALJ found that Plaintiff was capable of performing work  
10 existing in significant numbers in the national economy, including the occupations  
11 of marker, linen-room attendant, and stores laborer. (AR 26-27.) Accordingly, the  
12 ALJ concluded that Plaintiff was not disabled. (AR 27-28.)

13 The Appeals Council subsequently denied Plaintiff’s request for review (AR  
14 1-7), rendering the ALJ’s decision the final decision of the Commissioner.

## 15 16 **DISPUTED ISSUE**

- 17 1. Whether the ALJ properly evaluated the opinions of Drs. Chehrazi and  
18 Mallare in assessing Plaintiff’s RFC.

## 19 20 **STANDARD OF REVIEW**

21 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to  
22 determine whether the Commissioner’s findings are supported by substantial  
23 evidence and whether the proper legal standards were applied. *See Treichler v.*  
24 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial  
25 evidence means “more than a mere scintilla” but less than a preponderance. *See*  
26 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d  
27 1028, 1035 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a  
28 reasonable mind might accept as adequate to support a conclusion.” *Richardson*, 402

1 U.S. at 401. This Court must review the record as a whole, weighing both the  
2 evidence that supports and the evidence that detracts from the Commissioner's  
3 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more  
4 than one rational interpretation, the Commissioner's decision must be upheld. *See*  
5 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

## 6 7 **DISCUSSION**

### 8 **I. Relevant Evidence**

#### 9 a. Dr. Chehrazi

10 Avazeh Chehrazi, Ph.D., performed a consultative psychological evaluation of  
11 Plaintiff in December 2014. As part of her evaluation, Dr. Chehrazi conducted a  
12 mental status examination and also administered psychological tests. Dr. Chehrazi  
13 noted that Plaintiff's affect was dysphoric, her speech was low in volume and slow  
14 in rate and that her time and work pace were below average. Plaintiff's intellectual  
15 functioning was in the average range, and her memory was intact except for mildly  
16 diminished immediate memory. Plaintiff's attention and concentration span were  
17 moderately diminished. (AR 267-268.) In addition, Dr. Chehrazi noted Plaintiff's  
18 history of interpersonal difficulties and reported that Plaintiff presented as slightly  
19 socially inappropriate during the evaluation. (AR 269.)

20 Dr. Chehrazi diagnosed Plaintiff with probable bipolar disorder and gave her  
21 a global assessment of functioning ("GAF") score of 63. (AR 269.) She opined that  
22 with her continued "medication and regime," Plaintiff would have no difficulty  
23 carrying out short and simplistic instructions and no difficulty making simplistic  
24 work-related decisions without special supervision. However, Dr. Chehrazi opined  
25 that Plaintiff would have moderate difficulty complying with job rules such as safety  
26 and attendance, moderate difficulty maintaining persistence and pace in a normal  
27 workplace setting, and moderate difficulty interacting appropriately with supervisors,  
28 coworkers and peers on a consistent basis. (AR 269.)

1           b. Dr. Mallare

2           State agency physician L. Mallare, M.D., reviewed Plaintiff's medical record  
3 and concluded that she suffered from a severe medical impairment, namely affective  
4 disorder. Dr. Mallare's conclusions were similar to those of Dr. Chehrazi. For  
5 example, Dr. Mallare opined that Plaintiff retained the ability to understand,  
6 remember, and carry out short and simple instructions and had no limitations in  
7 making simple work-related decisions. (AR 63.) Also like Dr. Chehrazi, Dr. Mallare  
8 opined that Plaintiff suffered from moderate difficulties in social functioning and  
9 moderate difficulties in maintaining concentration, persistence or pace. (AR 61.)  
10 More specifically, Dr. Mallare opined that Plaintiff was moderately limited in the  
11 following areas: the ability to maintain attention and concentration for extended  
12 period; the ability to perform activities within a schedule, maintain regular  
13 attendance, and be punctual within customary tolerances; the ability to complete a  
14 normal workday and workweek without interruptions from psychologically based  
15 symptoms and to perform at a consistent pace with an unreasonable number and  
16 length of rest periods; the ability to interact appropriately with the general public;  
17 and the ability to get along with coworkers or peers without distracting them or  
18 exhibiting behavioral extremes. Furthermore, as relevant to the present case,  
19 Dr. Mallare opined that Plaintiff was moderately limited in the ability to accept  
20 instructions and respond appropriately to criticism from supervisors. (AR 63-64.)  
21

22       **II.    Relevant Law**

23           Plaintiff contends that the ALJ erred in assessing her RFC because she failed  
24 to either adopt or provide sufficient reasons for rejecting the medical opinions of  
25 Drs. Chehrazi and Mallare. In particular, Plaintiff argues that the ALJ failed to  
26 address Dr. Chehrazi's opinion that Plaintiff is moderately limited in her ability to  
27 interact appropriately with supervisors and Dr. Mallare's similar opinion that  
28 Plaintiff is moderately limited in her ability to accept instruction and respond

1 appropriately to criticism from supervisors. (ECF No. 26 at 6.) According to Plaintiff,  
2 the ALJ erred by implicitly rejecting these physicians' opinions without providing  
3 adequate reasons for doing so. (ECF No. 26 at 7-8.)

4 A claimant's RFC is the most she can still do despite her limitations. *Smolen*  
5 *v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R. § 404.1545(a)). In  
6 determining a claimant's RFC, the ALJ must consider all relevant evidence of record,  
7 including medical opinions. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.  
8 2008); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006); *see* 20 C.F.R.  
9 § 404.1527(b). "Significantly, unless an ALJ expressly rejects a particular medical  
10 opinion, he must consider its findings when crafting the claimant's RFC." *Gamache*  
11 *v. Colvin*, 2014 WL 5511210, at \*1 (C.D. Cal. Oct. 31, 2014) (citing *Lester v. Chater*,  
12 81 F.3d 821, 834 (9th Cir. 1995)). To reject the opinion of an examining physician,  
13 even if that opinion is contradicted, an ALJ must provide specific and legitimate  
14 reasons that are supported by substantial evidence. *Lester*, 81 F.3d at 830-831. The  
15 ALJ can meet the requisite specific and legitimate standard "by setting out a detailed  
16 and thorough summary of the facts and conflicting clinical evidence, stating his  
17 interpretation thereof, and making findings." *Trevizo v. Berryhill*, 871 F.3d 664, 675  
18 (9th Cir. 2017).

### 19 20 **III. Analysis**

21 In reaching her RFC determination, the ALJ considered the opinions of both  
22 Dr. Chehrazi and Dr. Mallare. The ALJ explained:

23 Based on her clinical findings and observations, Dr. Chehrazi opined  
24 that [Plaintiff's] bipolar disorder caused moderate limitation in  
25 [Plaintiff's] ability to perform a variety of work-related activities, such  
26 as complying with job rules (e.g., safety, attendance, etc.); maintaining  
27 persistence and pace in a normal workplace setting; and interacting  
28 appropriately with supervisors, coworkers, and peers on a consistent

1 basis. She opined [Plaintiff's] bipolar disorder caused no more than mild  
2 limitation in [Plaintiff's] ability to understand, remember, and carry out  
3 both simple and complex instructions; making simplistic work-related  
4 decisions without supervision; and responding to changes in a normal  
5 workplace setting. L. Mallare, M.D., a State agency medical consultant,  
6 opined [Plaintiff] could understand, remember, and carry out simple  
7 work-related tasks in a work setting with reduced social contact. Dr.  
8 Mallare opined [Plaintiff] could adapt to the requirements of simple  
9 work. These opinions are deserving of significant probative weight  
10 because they are largely consistent both with each other and with the  
11 objective medical evidence, which shows a history of bipolar disorder,  
12 as well as depressed mood, but otherwise mostly normal cognitive,  
13 expressive, intellectual, receptive, and social functioning. Dr. Chehrazi  
14 had the opportunity to examine [Plaintiff] personally, while Dr. Mallare  
15 had the opportunity to review and consider the relevant documentary  
16 evidence, which lends their opinions additional probative weight.  
17 Further, as a psychologist and a psychiatrist, respectively, Dr. Chehrazi  
18 and Dr. Mallare have knowledge, training, and a perspective that could  
19 reasonably be expected to give them greater insight into the limitations  
20 imposed by [Plaintiff's] mental impairments.

21 (AR 25.)

22 The ALJ then determined that Plaintiff retained a RFC for (a) simple, routine  
23 work, requiring a reasoning level no higher than two and (b) work involving no more  
24 than occasional contact with coworkers or the public. (AR 22.) Although the ALJ  
25 purported to give significant weight to the opinions of Dr. Chehrazi and Dr. Mallare,  
26 she did not incorporate the specific limitations regarding Plaintiff's ability to interact  
27 with supervisors into her RFC assessment. The ALJ mentioned this limitation as  
28 contained in Dr. Chehrazi's report, but she did not note that Dr. Mallare reached the

1 same conclusion. The ALJ's failure to either include these limitations in Plaintiff's  
2 RFC or provide legally sufficient reasons for rejecting them requires remand. *See*  
3 *Bain v. Astrue*, 319 F. App'x 543, 546 (9th Cir. 2009) (remanding where the ALJ  
4 failed to either discredit or incorporate the limitations enumerated by the state agency  
5 consultant, including that the opinion that claimant was moderately limited in her  
6 ability to accept instructions and respond appropriately to criticism from  
7 supervisors); *Rodriguez v. Colvin*, 2017 WL 1246328, at \*5 (C.D. Cal. Apr. 5, 2017)  
8 (remanding where ALJ purported to give great weight to physician's opinion, but  
9 failed to incorporate "or account for" physician's opinion that claimant was  
10 moderately limited in, among other things, the ability performing activities within a  
11 schedule and maintaining regular attendance); *Palleschi v. Colvin*, 2016 WL  
12 7261400, at \*5 (C.D. Cal. Dec. 15, 2016) (remanding where ALJ failed to adopt or  
13 provide adequate reasons for rejecting physician's opinion that claimant was  
14 moderately limited in the ability to interact with supervisors and respond to work  
15 pressure, "especially after giving 'great weight' to [the physician's] opinions  
16 generally").

17 The Commissioner argues that the ALJ's limitation to simple, routine work  
18 and only occasional contact with coworkers and the public adequately  
19 "accommodated" all of Plaintiff's limitations. (ECF No. 28 at 4.) Contrary to the  
20 Commissioner's suggestion, an inability to appropriately interact with or respond to  
21 criticism from supervisors is distinct from an inability to interact with either  
22 coworkers or the public. Indeed, the Social Security regulations treat the abilities to  
23 respond appropriately to "supervision" and to get along with "coworkers" as separate  
24 aspects of the "basic mental demands" of unskilled work, noting that the "substantial  
25 loss of ability to meet" any basic mental demand could "severely limit the potential  
26 occupational base." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1); see SSR 85-15 at  
27 \*4. *See Palleschi*, 2016 WL 7261400, at \*5 (rejecting argument that ALJ's RFC  
28 limiting claimant's interaction with coworkers effectively accounted for claimant's

1 limited ability to interact with supervisors); *Hunter v. Colvin*, 2015 WL 501466, at  
2 \*1 (C.D. Cal. Feb. 5, 2015) (RFC limiting claimant's contact with the public did not  
3 account for physician's opinion that claimant was limited in ability to interact with  
4 co-workers and supervisors). To the extent that *Gann v. Berryhill*, 2018 WL  
5 2441581, at \*11 (E.D. Cal. May 31, 2018), is construed as holding to the contrary,  
6 the Court finds it unpersuasive.

7       Next, the Commissioner argues that the medical record supports the ALJ's  
8 RFC determination, pointing out that Dr. Renee Sabshin's treatment notes reflect  
9 unremarkable findings. (ECF No. 28 at 4-5.) As an initial matter, the Commissioner  
10 does not point to records indicating that Dr. Sabshin reached an opinion contrary to  
11 the opinions of Drs. Chehrazi and Mallare. Yet even assuming Dr. Sabshin did so,  
12 the ALJ did not purport to rely upon it – or any other evidence – to reject the opinions  
13 that Plaintiff was moderately limited in her ability to interact with supervisors. The  
14 Court may not consider reasons for rejecting an expert opinion that were not  
15 articulated by the ALJ. *See Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003);  
16 *Bunnell v. Sullivan*, 947 F.2d 341, 345-346 (9th Cir. 1991) (en banc).

17       Finally, the Commissioner contends that any error was harmless. According to  
18 the Commissioner, Plaintiff has failed to demonstrate that a limitation on the ability  
19 to interact with supervisors would preclude her from performing the jobs identified  
20 by the VE. In support of this argument, the Commissioner discusses the tasks  
21 required by each of those three jobs as defined by the Dictionary of Occupational  
22 Titles (“DOT”) and urges that none require significant interaction with supervisors.  
23 (ECF No. 28 at 5-6.)

24       The Commissioner's argument, however, is based upon speculation. Absent  
25 testimony from the VE (or some other evidence) about these jobs, the Court cannot  
26 conclude that Plaintiff could perform them despite the moderate limitations discussed  
27 above. In sum, the ALJ's determination that Plaintiff could perform jobs existing in  
28 the national economy hinged on an RFC that failed to account for the opinions of



1 Drs. Chehrazi and Mallare. (See AR 49-50.) Consequently, the ultimate  
2 determination of non-disability was based upon legal error.

### 4 REMEDY

5 Ninth Circuit case law “precludes a district court from remanding a case for an  
6 award of benefits unless certain prerequisites are met.” *Dominguez v. Colvin*, 808  
7 F.3d 403, 407 (9th Cir. 2016) (citations omitted). “The district court must first  
8 determine that the ALJ made a legal error, such as failing to provide legally sufficient  
9 reasons for rejecting evidence. . . . If the court finds such an error, it must next review  
10 the record as a whole and determine whether it is fully developed, is free from  
11 conflicts and ambiguities, and all essential factual issues have been resolved.”  
12 *Dominguez*, 808 F.3d at 407 (citation and internal quotation marks omitted).

13 Although the Court has found error as discussed above, the record on the whole  
14 is not fully developed and factual issues remain outstanding. The issues concerning  
15 Plaintiff’s alleged disability “should be resolved through further proceedings on an  
16 open record before a proper disability determination can be made by the ALJ in the  
17 first instance.” See *Brown-Hunter v. Colvin*, 806 F.3d 487, 496 (9th Cir. 2015); see  
18 also *Treichler*, 775 F.3d at 1101 (remand for award of benefits is inappropriate where  
19 “there is conflicting evidence, and not all essential factual issues have been  
20 resolved”) (citation omitted); *Strauss v. Comm’r of the Soc. Sec. Admin.*, 635 F.3d  
21 1135, 1138 (9th Cir. 2011) (same where the record does not clearly demonstrate the  
22 claimant is disabled within the meaning of the Social Security Act).

23 Accordingly, the appropriate remedy is a remand for further administrative  
24 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).<sup>2</sup>

25 ///

26 IT IS THEREFORE ORDERED that Judgment be entered reversing the  
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28 <sup>2</sup> It is not the Court’s intent to limit the scope of the remand.

1 decision of the Commissioner of Social Security and remanding this matter for  
2 further administrative proceedings consistent with this opinion.

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4 DATED: 12/11/2018

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7 ALEXANDER F. MacKINNON  
8 UNITED STATES MAGISTRATE JUDGE  
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