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

<b>JESSICA L.<sup>1</sup>,</b>	)	<b>NO. CV 18-3530-KS</b>
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>MEMORANDUM OPINION AND ORDER</b>
<b>NANCY A. BERRYHILL, Acting</b>	)	
<b>Commissioner of Social Security,</b>	)	
<b>Defendant.</b>	)	
_____	)	

**INTRODUCTION**

Jessica L. (“Plaintiff”) filed a Complaint on April 26, 2018, seeking review of the denial of her applications for a period of disability, Disability Insurance benefits (“DI”), and Supplemental Security Income (“SSI”). On June 7, 2018, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 11-13.) On January 28, 2019, the parties filed a Joint Stipulation (“Joint Stip.”). (Dkt. No. 23.) Plaintiff seeks an order reversing the Commissioner’s decision and ordering the payment of benefits. (Joint Stip. at 31-32.) The Commissioner requests that the ALJ’s

<sup>1</sup> Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 decision be affirmed or, in the alternative, remanded for further proceedings. (*See* AR 32-  
2 34.) The Court has taken the matter under submission without oral argument.

3  
4 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**  
5

6 On April 17, 2014, Plaintiff, who was born on October 18, 1966, filed applications for  
7 a period of disability and DI as well as for SSI.<sup>2</sup> (*See* Administrative Record (“AR”) 131,  
8 243, 247; Joint Stip. at 1.) Plaintiff alleged disability commencing November 8, 2013 due  
9 to: “depression, anxiety/panic disorder/sleep disorder.” (AR 282.) Plaintiff previously  
10 worked as a cook (DOT 315.361-010), cash accounting clerk (DOT 211.362-010), and a  
11 receiving clerk (DOT 222.387-050). (AR 138; *see also id.* 283.) After the Commissioner  
12 denied Plaintiff’s applications initially (AR 104-05) and on reconsideration (AR 106-07),  
13 Plaintiff requested a hearing (AR 165-66). Administrative Law Judge Richard T. Breen  
14 (“ALJ”) held a hearing on September 29, 2016. (AR 42.) Plaintiff, who was represented by  
15 counsel, testified before the ALJ as did vocational expert (“VE”) Howard Goldfarb. (AR 42-  
16 83.) On December 6, 2016, the ALJ issued an unfavorable decision, denying Plaintiff’s  
17 applications. (AR 131-40.) On March 27, 2018, the Appeals Council denied Plaintiff’s  
18 request for review. (AR 1-6.)  
19

20 **SUMMARY OF ADMINISTRATIVE DECISION**  
21

22 The ALJ found that Plaintiff had not engaged in substantial gainful activity since the  
23 November 8, 2013 alleged onset date. (AR 133.) The ALJ determined that Plaintiff had the  
24 following severe impairments: bipolar disorder with depression and anxiety. (AR 133.) The  
25 ALJ also found that Plaintiff had a medically determinable but non-severe impairment of  
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27 <sup>2</sup> Plaintiff was 46 years old on the application date and thus met the agency’s definition of a younger person. *See*  
28 20 C.F.R. §§ 404.1563(c), 416.963(c). Plaintiff has since changed age categories and is now categorized as a person  
closely approaching advanced age. *See id.* §§ 404.1563(d), 416.963(d).

1 type II diabetes. (AR 133.) After considering listings 12.04 and 12.05 specifically, the ALJ  
2 concluded that Plaintiff did not have an impairment or combination of impairments that met  
3 or medically equaled the severity of an impairment listed in 20 C.F.R. part 404, subpart P,  
4 appendix 1 (20 C.F.R. §§ §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925,  
5 416.926). (AR 17.) The ALJ determined that Plaintiff had the residual functional capacity  
6 (“RFC”) to perform a full range of work at all exertional levels with the following  
7 limitations:

8  
9 [She] is limited to understanding, remembering, and carrying out instructions at  
10 a simple, routine, and repetitive task level, but not at a production rate pace (e.g.  
11 assembly line work); is limited to occasionally responding appropriately to  
12 coworkers (superficial level); can never respond appropriately to the public; can  
13 never work around flashing lights; and is limited to moderate noise exposure.

14  
15 (AR 135.)  
16

17 The ALJ found that Plaintiff was unable to perform her past relevant work as a cook  
18 (DOT 315.361-010), cash accounting clerk (DOT 211.362-010), and a receiving clerk (DOT  
19 222.387-050). (AR 138.) However, the ALJ also found that, considering Plaintiff’s age,  
20 education, work experience, and residual functional capacity, there are jobs that exist in  
21 significant numbers in the national economy that Plaintiff can perform, including the  
22 representative occupations of cleaner (DOT 381.687-018), polisher (DOT 761.684-026), and  
23 marker (DOT 209.587-034). (AR 139.) Accordingly, the ALJ determined that Plaintiff had  
24 not been under a disability, as defined in the Social Security Act, from the alleged onset date  
25 through the date of the ALJ’s decision. (AR 139-40.)

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## STANDARD OF REVIEW

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

Although this Court cannot substitute its discretion for the Commissioner’s, the Court nonetheless must review the record as a whole, “weighing both the evidence that supports and the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted); *Desrosiers v. Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

The Court will uphold the Commissioner’s decision when the evidence is susceptible to more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may review only the reasons stated by the ALJ in his decision “and may not affirm the ALJ on a ground upon which he did not rely.” *Orn*, 495 F.3d at 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not reverse the Commissioner’s decision if it is based on harmless error, which exists if the error is “‘inconsequential to the ultimate nondisability determination,’ or if despite the legal error,

1 ‘the agency’s path may reasonably be discerned.’” *Brown-Hunter v. Colvin*, 806 F.3d 487,  
2 492 (9th Cir. 2015) (internal citations omitted).

## 3 4 **DISCUSSION**

5  
6 There are two issues in dispute: (1) whether the ALJ erred in rejecting the opinions of  
7 Plaintiff’s treating psychiatrist and former treating therapist in favor of the opinions of  
8 Plaintiff’s former treating psychiatrist, the reviewing physicians, and the consultative  
9 examining physician; and (2) whether the ALJ properly evaluated the credibility of  
10 Plaintiff’s statements about her symptoms and limitations. (Joint Stip. at 3.)

### 11 12 **I. The ALJ’s Evaluation of the Medical Opinions**

13  
14 The first issue in dispute concerns the ALJ’s evaluation of the opinion of Plaintiff’s  
15 treating psychiatrist, Timothy Jack, M.D., and former treating therapist, Marysol Rezanov,  
16 LCSW. (Joint Stip. at 3.) “The ALJ is responsible for translating and incorporating clinical  
17 findings into a succinct RFC.” *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th  
18 Cir. 2015). In doing so, the ALJ must articulate a “substantive basis” for rejecting a medical  
19 opinion or crediting one medical opinion over another. *Garrison v. Colvin*, 759 F.3d 995,  
20 1012 (9th Cir. 2014).

21  
22 Generally, the opinion of a treating source is entitled to greater weight than the opinion  
23 of doctors who do not treat the claimant because treating sources are “most able to provide a  
24 detailed, longitudinal picture” of a claimant’s medical impairments and bring a perspective  
25 to the medical evidence that cannot be obtained from objective medical findings alone. *See*  
26 *Garrison*, 759 F.3d at 1012; *see* 20 C.F.R. §§ 404.1527(c)(2) and 416.927(c)(2) (governing  
27 claims filed before March 27, 2017); *see also* 20 C.F.R. §§ 404.1520(c) and 416.920(c)  
28 (governing claims filed on or after March 27, 2017). Accordingly, to reject an

1 uncontradicted opinion of a treating or examining physician, the ALJ must provide “clear  
2 and convincing reasons that are supported by substantial evidence.” *Trevizo v. Berryhill*,  
3 871 F.3d 664, 675 (9th Cir. 2017); *Ghanim v. Colvin*, 763 F.3d 1154, 1160-61 (9th Cir.  
4 2014). Alternatively, “[i]f a treating or examining doctor’s opinion *is* contradicted by  
5 another doctor’s opinion, an ALJ may only reject it by providing specific and legitimate  
6 reasons that are supported by substantial evidence.” *Trevizo*, 871 F.3d at 675 (emphasis  
7 added). “The ALJ can meet this burden by setting out a detailed and thorough summary of  
8 the facts and conflicting clinical evidence, stating his interpretation thereof, and making  
9 findings.” *Id.* (quoting *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

10  
11 An ALJ does not commit legal error *per se* solely by according greater weight to the  
12 opinion of a nonexamining State agency physician than to the contradictory opinion of a  
13 treating physician. *See, e.g., Morgan v. Comm’r of. Soc. Sec. Admin.*, 169 F.3d 595, 600-03  
14 (9th Cir. 1999). Additionally, an ALJ may properly reject a treating physician’s conclusions  
15 that do not “mesh” with the treating physician’s objective data or history. *See, e.g.,*  
16 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008); *Rollins v. Massanari*, 261 F.3d  
17 853, 856 (9th Cir. 2001).

18  
19 **A. ALJ’s Evaluation of the Opinion of Timothy Jack, M.D.**

20  
21 **1. Plaintiff’s Treatment History at Dr. Jack’s Clinic**

22  
23 The record contains “Progress Notes Reports” from the Los Angeles County  
24 Department of Mental Health (“LACDMH”) reflecting treatment that Plaintiff received at  
25 the West Valley Mental Health Center, the clinic of her treating psychiatrist, Timothy Jack,  
26 M.D. (*See* AR 1186-1266.) These treating notes are summarized below.

1 On October 15, 2015, Plaintiff saw Elizabeth Gil, Ph.D., a licensed psychologist, who  
2 observed that Plaintiff was agitated and irritable and expressed a desire to switch psychiatric  
3 care to the West Valley Mental Health Center. (AR 1186.) According to the “Initial Contact  
4 Data” from this appointment, Plaintiff avoided eye contact, exhibited agitated motor activity,  
5 a “sensitive” interactional style, a “tearful, irritable, hopeless/worthless, anxious” mood, and  
6 an “expansive, worried” affect. (AR 1262.) Plaintiff reported her last episode of mania  
7 occurred a year prior, in October 2014. (AR 1264.) Plaintiff reported “depressed mood,  
8 crying spells, lack of interest in things, memory problems, anxiety, hopelessness.” (AR  
9 1264.) On October 20, 2015, Plaintiff completed the intake assessment with Dr. Gil. (AR  
10 1189.) Plaintiff indicated that she had been effectively treated with electroconvulsive  
11 therapy (“ECT”) and received 28 treatments starting in 2012. (AR 1189.) She expressed a  
12 desire to continue receiving ECT but stated that she did not have the resources to do so. (AR  
13 1189.)

14  
15 Plaintiff saw Dr. Gil again on October 27, 2015. (AR 1191.) Dr. Gil reported that  
16 Plaintiff was anxious and depressed. (AR 1192.) Plaintiff agreed to trial Latuda, an  
17 antipsychotic, was prescribed Ativan, a sedative, and continued her prescription for  
18 Lamictal, an anticonvulsant used to treat bipolar disorder. (AR 1192.) On November 10,  
19 2015, Plaintiff saw Dr. Gil for a second individual therapy session. (AR 1197.) At that visit,  
20 Plaintiff exhibited an anxious mood but intact insight and judgment. (AR 1198.) Dr. Gil  
21 prescribed Seroquel instead of Latuda, prescribed Cogentin, and continued Plaintiff’s  
22 prescriptions for Ativan and Lamictal. (AR 1198.)

23  
24 Plaintiff also saw psychiatrist Cynthia Folsome, M.D., at the West Valley Mental  
25 Health Center.<sup>3</sup> (See AR 1199.) On November 12, 2015, Dr. Folsome recorded Plaintiff’s

26  
27 <sup>3</sup> During the administrative hearing, Plaintiff explained that her first treating psychiatrist at the West Valley  
28 Mental Health Center was Dr. Folsome, and their treatment relationship lasted until Dr. Folsome went on maternity leave.  
(AR 65.) Then Plaintiff saw Dr. Davidoff, who left the West Valley Mental Health Center shortly after meeting Plaintiff,  
and, finally, Plaintiff received treatment from Dr. Jack. (AR 65.) Plaintiff testified that throughout this time she also saw

1 description of her mental health history as follows: she has had episodes of depression since  
2 childhood and also has episodes of mania that have lasted for up to a month; she received  
3 outpatient treatment since she was 18 years old; she has had six psychiatric hospitalizations  
4 since 2011; she underwent ECT but has had issues with memory and concentration ever  
5 since; and she has tried a number of psychiatric medications including Lithium, Geodon,  
6 Zoloft, Prozac, Trazodone, Wellbutrin, Xanax, and Gabapentin. (AR 1199.) Plaintiff also  
7 reported that was experiencing nightmares and muscle cramps with Latuda. (AR 1199.)  
8 Plaintiff described her current symptoms as anxiety, depressed moods, irritability, panic  
9 attacks with triggers, anhedonia, low energy, and variable appetite. (AR 1199.)  
10

11 Plaintiff returned to Dr. Gil for individual therapy on November 17, 2015. (AR 1202.)  
12 Plaintiff reported experiencing medication side effects including dry mouth but agreed to  
13 continue the medications and contact the psychiatrist if she was not able to manage the side  
14 effects. (AR 1202.) Plaintiff saw Dr. Gil again on November 24, 2015 (AR 1203) and  
15 December 3, 2015 (AR 1205). Plaintiff saw Dr. Folsome again on December 8, 2015.  
16 Plaintiff reported feeling less depressed and having fewer and less severe panic attacks, but  
17 she also reported feeling tired and sleeping too much and continuing to struggle with  
18 irritability and problems with memory and concentration. (AR 1208.)  
19

20 On December 10, 2015, Plaintiff saw Dr. Gil for individual therapy and reported  
21 increased symptoms of anxiety but stated that she was able to manage symptoms effectively.  
22 (AR 1209.) Plaintiff reported doing housesitting and pet sitting “which enable her to be  
23 alone and away from others.” (AR 1209.)  
24  
25

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26 Dr. Gil for talk therapy. (AR 65.) The administrative record confirms that Plaintiff received care from all three  
27 psychiatrists (Dr. Folsome, Dr. Davidoff, and Dr. Jack), and that, throughout her care at the West Valley Mental Health  
28 Center, Plaintiff continued to see Dr. Gil for group therapy. (*See also* AR 67 (Plaintiff is attending group therapy with  
Dr. Gil); *see also, e.g.*, AR 1187 (10/19/2015 group therapy session with Dr. Gil), 1204 (11/30/2015 group therapy  
session with Dr. Gil), 1240 (4/25/2016 group therapy session with Dr. Gil).)



1 On January 6, 2016, Plaintiff reported to Dr. Folsome that she had not felt depressed  
2 “lately” but still experienced anhedonia. (AR 1214.) Plaintiff also reported struggling with  
3 anxiety on a daily basis. (AR 1214.) She reported that her irritability had decreased, her  
4 memory and concentration problems remained unchanged, and she denied any recent manic  
5 or psychotic symptoms. (AR 1214.)  
6

7 On January 25, 2016, Plaintiff saw Norma Huerta, an Associate Clinical Social  
8 Worker (“ASW”), for therapy at the West Valley Mental Health Center. (AR 1218.) Huerta  
9 reported that Plaintiff’s mood was depressed and anxious, her affect “was congruent to her  
10 mood, tearful,” and she reported passive thoughts of being better off dead but denied suicide  
11 plan/intent. (AR 1218.)  
12

13 On February 4, 2016, Plaintiff saw Dr. Folsome and reported the she was “not doing  
14 so great,” feeling more depressed, anxious, and irritable, experiencing more panic attacks  
15 since her last appointment, and was unsure if she was having nightmares but stated that she  
16 wakes up yelling. (AR 1220.)  
17

18 On February 10, 2016, Plaintiff saw Huerta again and continued to exhibit a depressed  
19 and anxious mood and an affect “congruent to her mood, tearful” and to report passive  
20 thoughts of being better off dead. (AR 1222.) Plaintiff reported that she wants to stay in bed  
21 all day. (AR 1222.) Huerta discussed activities that might help Plaintiff lift her mood, and  
22 Plaintiff stated that she was thinking of taking classes in cake decorating. (AR 1222.)  
23

24 On February 18, 2016, Plaintiff saw Dr. Folsome and reported that she was “not  
25 great,” starting to engage in obsessive compulsive behaviors like counting stairs, checking  
26 locks and keys three times, etc. (AR 1224.) She reported that she could spend hours a day  
27 doing these behaviors. (AR 1224.) Plaintiff continued to complain of a depressed mood,  
28 panic attacks, and worry, waking up yelling, and experiencing memory and concentration

1 problems. (AR 1224.) Dr. Folsome continued Plaintiff's prescriptions for Buspar, Seroquel,  
2 and Lamictal and told Plaintiff that she could increase her dose of Buspar from 5mg/day to  
3 the maximum dose of 60mg/day. (AR 1224.)  
4

5 On February 22, 2016, Plaintiff saw Huerta. (AR 1226.) Plaintiff's mental status  
6 examination was the same – depressed and anxious mood, an affect “congruent to her mood,  
7 tearful,” and passive thoughts of being better off dead. (AR 1226.)  
8

9 On March 17, 2016, Plaintiff saw Dr. Folsome. (AR 1230.) Plaintiff reported  
10 decreased depression and anxiety but with some lingering obsessive compulsive behaviors  
11 (cleaning and counting behaviors). (AR 1230.) Plaintiff reported no panic attacks since her  
12 last appointment. (AR 1230.) Dr. Folsome continued Plaintiff's prescriptions for Buspar,  
13 Seroquel, Lamcital, and Cogentin and decreased Plaintiff's Ativan dosage. (AR 1230.)  
14

15 On April 4, 2016, Plaintiff saw Huerta. (AR 1234.) Plaintiff's mental status  
16 examination was the same – depressed and anxious mood, an affect “congruent to her mood,  
17 tearful,” and passive thoughts of being better off dead. (AR 1234.)  
18

19 On April 14, 2016, Plaintiff saw Huerta. (AR 1236.) Plaintiff's mood was euthymic  
20 and her affect congruent to her mood. (AR 1236.) Plaintiff reported that she had been  
21 feeling better because she had been busy dog walking, going to the gym, going out with a  
22 friend, and looking forward to a visit from her brother. (AR 1236.) Plaintiff also reported  
23 having more energy. (AR 1236.)  
24

25 On April 18, 2016, Plaintiff saw Dr. Folsome and reported that things had been going  
26 well until two days earlier and she now felt “not so great” but could not identify any triggers.  
27 (AR 1238.) Plaintiff complained of depressed mood, crying spells, anhedonia, decreased  
28 appetite, sleeping more during the day, continued counting and cleaning behaviors. (AR

1 1238.) Plaintiff reported that she has a hard time identifying episodes of mania but that,  
2 according to her mother, Plaintiff had been manic for the past couple of weeks. (AR 1238.)  
3 Plaintiff said she had been “talking too much and mood elevated . . . , going to the gym  
4 several times a day, decreased need for sleep during that time, creative and random ideas.”  
5 (AR 1238.) Dr. Folsome increased Plaintiff’s Seroquel dosage and continued her  
6 prescriptions for Buspar and Lamictal. (AR 1238.)

7  
8 On April 28, 2016, Plaintiff saw Huerta who observed that Plaintiff’s mood was  
9 “okay” and her affect congruent to her mood. (AR 1241.) Plaintiff reported that it had been  
10 “rough . . . due to her depression coming back.” (AR 1241.)

11  
12 On May 2, 2016, Plaintiff saw Dr. Folsome and reported that her depression was better  
13 but her anxiety was high, her night sleep “fragmented,” and she continued to have counting  
14 and cleaning behaviors. (AR 1243.) Dr. Folsome observed that Plaintiff’s mood and affect  
15 were slightly anxious. (AR 1243.)

16  
17 On May 11, 2016, Plaintiff saw Huerta, who observed that Plaintiff’s mood was  
18 euthymic and her affect congruent to her mood. (AR 1246.) Plaintiff reported feeling much  
19 better, going to the gym four times a week, going out with her friend more, and thinking  
20 about volunteering. (AR 1246.)

21  
22 On May 23, 2016, Plaintiff saw Huerta, who observed that Plaintiff’s mood was  
23 “okay” and her affect congruent to her mood. (AR 1247.) Plaintiff reported she has been  
24 thinking more positively and would try to volunteer with rescue animals. (AR 1247.)

25  
26 On June 9, 2016, Plaintiff saw Julia Davidoff, M.D., instead of Dr. Folsome. (AR  
27 1250.) Plaintiff reported feeling depressed, having a hard time getting out of bed, and poor  
28 motivation, but did not report panic attacks. (AR 1250.) Plaintiff asked to go off Seroquel

1 because of the weight gain, so Dr. Davidoff changed her prescription to Latuda, discontinued  
2 her prescription for Congentin, and continued Plaintiff's prescriptions for Buspar and  
3 Lamictal. (AR 1250.)  
4

5 On June 9, 2016, Plaintiff saw Huerta, who reported that Plaintiff's mood was  
6 depressed and her affect congruent to her mood. (AR 1251.) Plaintiff reported that her  
7 mother had suffered a heart attack, and Plaintiff wanted to isolate herself and be alone. (AR  
8 1251.)  
9

## 10 **2. Opinion of Dr. Jack**

11

12 On October 19, 2016, Timothy Jack, M.D., with the West Valley Mental Health  
13 Center, completed a two-page check-the-box questionnaire on which he indicated that  
14 Plaintiff had been receiving treatment the West Valley Mental Health Center since October  
15 15, 2015 and was under his care at the clinic since August 12, 2016. (AR 1289.) On the  
16 questionnaire, Dr. Jack indicated that Plaintiff was markedly limited in the following areas:  
17 her ability to remember locations and work-like procedures; her ability to understand,  
18 remember, and carry out simple instructions; her ability to maintain attention and  
19 concentration for extended periods; her ability to perform activities within a schedule, be  
20 punctual, and maintain regular attendance; her ability to work in coordination with or  
21 proximity to others without being distracted; her ability to accept instructions and respond  
22 appropriately to criticism from supervisors; her ability to get along with coworkers without  
23 distracting them or exhibiting extreme behaviors; and her ability to respond appropriately to  
24 changes in the work setting. (AR 1290.) He further indicated that Plaintiff's impairments or  
25 treatments would cause her to be absent from work more than three times a month. (AR  
26 1290.)

27 \\  
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12

### 3. ALJ's Decision and Discussion

The ALJ discounted portions of Dr. Jack's opinion, including his assessment that Plaintiff would be markedly limited in her ability to accept instructions and respond appropriately to criticism from supervisors and that she would miss work more than three times a month. (*Compare* AR 135, 76, 77, 79 with AR 1290.) The ALJ explained that "[a]lthough Dr. Jack is a treating doctor, his opinion is not consistent with the medical evidence. Additionally, it is also not consistent with [Plaintiff's] activities of daily living, which include dog walking for pay, going to the gym, and going out with a friend." (AR 137.)

#### *a. Inconsistency with the Medical Evidence*

The ALJ cited no medical evidence in support of his statement that Dr. Jack's opinion is inconsistent with the medical evidence, and the Court, after reviewing the record, could not locate substantial evidence in the record that supports the ALJ's statement. The ALJ may not discredit a treating physician's opinion solely on the grounds that it conflicts with the opinions of the examining and reviewing physicians. Instead, the ALJ, having identified the conflict, must identify *specific* and legitimate reasons supported by substantial evidence in the record for crediting the opinions of the treating and examining physicians over the opinion of the treating psychiatrist. Given the ALJ's failure to identify *any* medical evidence that conflicted with Dr. Jack's opinion, and the Court's inability to identify substantial evidence in the record supporting the ALJ's assertion, the purported inconsistency is not a specific and legitimate reason supported by substantial evidence for discounting Dr. Jack's opinion.

In reaching this conclusion, the Court carefully reviewed the May 22, 2014 opinion of Plaintiff's prior treating psychiatrist, Michael Frankel, M.D., and Dr. Frankel's

1 accompanying treatment records. (AR 962.) However, Dr. Frankel stated that he was “not  
2 in a position to comment on [Plaintiff’s] condition since [March 8, 2013],” the last time he  
3 saw Plaintiff.<sup>4</sup> (AR 962.) Accordingly, his opinion is not at odds with Dr. Jack’s opinion,  
4 which concerns the period of time during which Plaintiff was receiving treatment at the West  
5 Valley Mental Health Center and does not purport to reach back in time to the period, before  
6 the alleged onset date, when Plaintiff was receiving treatment from Dr. Frankel. In light of  
7 the foregoing, the ALJ’s first reason for discounting Dr. Jack’s opinion – its purported  
8 inconsistency with the medical evidence – is not supported by substantial evidence in the  
9 record.

10  
11 *b. Plaintiff’s Activities of Daily Living*

12  
13 The ALJ’s second reason concerns Plaintiff’s activities of daily living, which,  
14 according to the ALJ, “include dog walking for pay, going to the gym, and going out with a  
15 friend.” (AR 137.) Plaintiff’s description of her activities of daily living include two Adult  
16 Function Reports, one Third Party Adult Function Report, and Plaintiff’s testimony at the  
17 administrative hearing. Plaintiff’s treatment notes from the West Valley Mental Health  
18

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19  
20 <sup>4</sup> Although Dr. Frankel stated that he was not in a position to comment on Plaintiff’s condition during the period  
21 in question (*i.e.*, on and after November 8, 2013), the ALJ stated that he accorded Dr. Frankel’s opinion “great weight.”  
22 (AR 137.) The ALJ explained that he relied heavily on Dr. Frankel’s opinion because “it was issued prior to [Plaintiff’s]  
23 alleged onset date,” “is consistent with the record as a whole and based on the fact that the doctor has a long treatment  
24 history with [Plaintiff].” (AR 137.) The ALJ’s rationale is strange given that Dr. Frankel appears to have treated Plaintiff  
25 for a shorter period of time (June 2012 into March 2013) than the staff at Dr. Jack’s clinic (October 2015 into October  
26 2016) – and, unlike Dr. Jack and his colleagues, Dr. Frankel expressly said that he could not offer a comment on  
27 Plaintiff’s condition during the alleged period of disability. Further, Dr. Frankel’s opinion indicated that he saw Plaintiff  
28 for the limited purpose of ECT treatments and, indeed, the Court located no treatment notes from Dr. Frankel other than  
those concerning his administration of ECT to Plaintiff. Accordingly, there are no records from Dr. Frankel reflecting  
mental status examinations or other objective findings concerning Plaintiff’s mental health. Nevertheless, the Court  
recognizes that both Dr. Frankel and Plaintiff appear to agree that the ECT regimen was effective, although Plaintiff also  
found the treatments prohibitively costly and accompanied by deficits in memory and attention. (AR 936 (ECT is  
beneficial but causes some memory impairment and “HAs”), 1189 (interested in continuing ECT but lacks resources to do  
so), 1199 (had issues with memory and concentration ever since undergoing ECT).) Finally, the record also reveals that,  
despite the purported efficacy of Plaintiff’s ECT treatments, Plaintiff was hospitalized for psychiatric reasons (increase  
thoughts of harming herself with a plan to overdose on drugs) during the course of her ECT treatments. (AR 936  
(1/9/2013 psychiatric hospitalization).)

1 Center, which are described above, also shed some light on Plaintiff's activities of daily  
2 living during the relevant period.

3  
4 i. Plaintiff's Activities According to the Function Reports

5  
6 On May 22, 2014, Plaintiff stated in an Adult Function Report that "dressing, bathing,  
7 and general hygiene is a chore. It exhausts me. It's a major accomplishment." (AR 315.)  
8 She stated that she uses a check list to remind her to take care of her grooming needs, such  
9 as brushing her teeth, brushing her hair, and using deodorant. (AR 316.) She stated that she  
10 used to cook all of her meals but is now limited to preparing sandwiches because she does  
11 not have the desire or energy to cook meals. (AR 316.) She stated that "stay[s] inside  
12 mostly" and crochets. (AR 315.) She stated that, if she needs to shop for something, she  
13 goes out "very early in the morning or late at night when less people are there." (AR 315.)  
14 She stated that she goes out once a week to shop for groceries and yarn and goes outside "a  
15 couple times a week." (AR 317.) She stated that: she can no longer concentrate to read;  
16 music and noise make her anxious; and being in public makes her anxious. (AR 318.) She  
17 stated that she sees her parents once a month and prefers to be alone. (AR 318-19.)

18  
19 On May 22, 2014, Plaintiff's then roommate, Cynthia A. Lavene, completed a Third  
20 Party Function Report, in which she stated that Plaintiff's conditions render her unable to  
21 work face to face with people. (AR 327.) She wrote that during the day, Plaintiff "sleep[s],  
22 stays in room." (AR 328.) She wrote that Plaintiff's condition makes bathing "a chore" for  
23 her, and Plaintiff bathes maybe three times per week. (AR 328.) Lavene stated that  
24 Plaintiff's meal preparation is limited to "convenience foods majority of time – frozen etc."  
25 but maybe two to three times a month she prepares casseroles. (AR 329.) Lavene stated that  
26 if she does not ask or tell Plaintiff to do house chores, "it won't get done." (AR 329.)  
27 Lavene stated that Plaintiff goes outside four times a week and shops for food once a week  
28 for approximately 30 minutes. (AR 330.) Lavene stated that Plaintiff "used to go camping –

1 reading – movies – now watches way too much TV – never wants to do anything” and “does  
2 not enjoy face to face conversation.” (AR 331.) Lavene stated that Plaintiff’s “social  
3 activity has all stopped.” (AR 332.) She stated that Plaintiff can follow spoken instructions  
4 but “may need repeated instruction.” (AR 332.) Finally, Lavene wrote that Plaintiff “can  
5 have a panic attack just at the thought of meeting new people.” (AR 333.)

6  
7 Approximately seven months later, on December 18, 2014, Plaintiff completed a  
8 second Adult Function Report. She stated that from the time she wakes up until the time she  
9 goes to bed she: eats breakfast; takes medication; sleeps; watches TV; eats dinner; and takes  
10 medication. (AR 356.) She stated that she dresses, bathes, and cares for her hair one to  
11 three times a week, depending on whether she has to go out. (AR 356.) She stated that she  
12 used to cook and bake daily and now is limited to preparing frozen dinners or ready to eat  
13 snacks. (AR 357.) She stated that she goes outside a few times a week and shops for  
14 groceries every other week. (AR 358.) She stated that she cannot engage in any of her  
15 former hobbies and interests because she either cannot concentrate long enough or gets  
16 anxiety. (AR 359.)

17  
18 ii. Testimony at the Administrative Hearing

19  
20 On September 29, 2016, more than two years after her initial Adult Function Report,  
21 Plaintiff testified at the administrative hearing. Plaintiff testified that she lives with her  
22 parents. (AR 46.) She testified that she leaves the house about twice a week. (AR 56.) She  
23 testified that she prefers to stay home because of the anxiety of being around people and she  
24 finds “noise . . . really difficult.” (AR 56.) She added that her depression on some days  
25 prevents her from getting out of bed. (AR 56.) She testified that when “the mania hits,” she  
26 makes “very quick decisions without thinking . . . think[s] life’s going to be great  
27 somewhere else,” packs her bag, and takes off to another city or state. (AR 57.) She  
28



1 testified that “the mania and the up, the high, might last for a while; and then, [she’s] back  
2 down again.” (AR 57.)  
3

4 The ALJ asked Plaintiff about the notes from the West Valley Mental Health Center  
5 indicating that Plaintiff was going to the gym and, on some days, went to the gym “multiple  
6 times a day.” (AR 57.) Plaintiff responded, “No,” (AR 57), adding later, “I haven’t been to  
7 the gym in over two months.” (AR 58.) However, Plaintiff confirmed for the ALJ that, for  
8 about a month earlier in the year, she had been going to the gym four times a week. (AR  
9 69.) The ALJ then asked, “When you talked to your therapist about that [going to the gym  
10 four times a week], you said that you had an elevated mood, were sleeping less, and having  
11 like random ideas. Do you remember that?” and Plaintiff responded, “No.” (AR 69.)  
12 Nevertheless, Plaintiff testified that when she has these bursts of physical energy and is  
13 “doing something . . . like going to the gym a lot,” her brain is “on fast-forward,” describing  
14 it as “the opposite of the depression . . . the other pole.” (AR 69, 70.)  
15

16 Plaintiff testified that her anxiety started after she received the ECT treatments with  
17 Dr. Frankel. (AR 63.) Elsewhere she testified that, while she was in Las Vegas – where she  
18 underwent the ECT treatments with Dr. Frankel – she was in a “partial hospitalization  
19 program . . . trying to deal with the anxiety” in addition to the depression. (AR 61-62.) She  
20 testified that her anxiety was triggered in part by noise, which became a problem for her at  
21 her job at Target and at her jobs at a daycare and a waterslide. (AR 63, 64.) Plaintiff stated  
22 that for meals she eats microwave meals and that her parents sometimes bring her back food  
23 from a restaurant. (AR 67.)  
24

25 Plaintiff testified that she dog sits for friends and relatives when they go out of town  
26 and gets paid “a little money” for it. (AR 54.) She testified that she does this dog sitting  
27 work maybe six times a year, mostly on weekends. (AR 55.) She testified that she generally  
28

1 makes \$25/day dog sitting and the most money she has made from dog sitting in the course  
2 of a month was \$100. (AR 55, 68.)  
3

4 Plaintiff also testified that she engages in compulsive behaviors: she counts her steps  
5 and takes steps backwards and forwards in order to make sure her total number of steps is  
6 divisible by three; and she cleans obsessively, sometimes spending hours scrubbing spots  
7 that may not even be there. (AR 68.) Finally, Plaintiff testified that she does not like to be  
8 around people so she does not do things socially. (AR 70.) However, she has a cousin who  
9 comes to her house once or twice a week, and they watch *Dancing with the Stars* together.  
10 (AR 70.)  
11

### 12 iii. Discussion 13

14 The ALJ correctly found that the Administrative Record’s description of Plaintiff’s  
15 activities of daily living is inconsistent with Dr. Jack’s assessment that Plaintiff would be  
16 markedly limited in her ability to accept instructions and respond to criticism from  
17 supervisors. There is no evidence that Plaintiff struggled to accept instructions or criticism  
18 from her dog sitting clients or from her roommate. Plaintiff also indicated in her Adult  
19 Function Reports that she gets along “fine” with authority figures, including the police and  
20 doctors, both of whom, presumably, have given Plaintiff instructions at various points. (AR  
21 361.) Accordingly, the ALJ’s reference to Plaintiff’s activities of daily living was a specific  
22 and legitimate reason supported by substantial evidence in the record for discounting this  
23 portion of Dr. Jack’s opinion.  
24

25 However, the ALJ erred in citing Plaintiff’s activities of daily living as a basis for  
26 discounting Dr. Jack’s opinion that Plaintiff would miss work more than three times a  
27 month. Plaintiff testified that she dog sat maybe six times a year, always for friends or  
28 relatives, and never for more than a few days at a time. Additionally, Plaintiff’s rate of pay

1 (\$25/hour) and maximum monthly earnings (\$100) suggest that she never dog sat for more  
2 than four days during the course of a single month. In sum, Plaintiff's brief and very  
3 occasional dog sitting does not indicate that she would be able to consistently work forty-  
4 hour weeks without missing work three times a month.  
5

6 Similarly, Plaintiff's references to going to the gym appear to be limited to her periods  
7 of mania, which can last up to a month, are accompanied by other troubling behaviors,  
8 including random ideas and a proclivity for moving out of state on a whim, and, are not  
9 accurate reflections of what she can do on a consistent basis. (*See* AR 1199 (manic periods  
10 last up to a month); 1236 (4/16/16 – Plaintiff reports going to the gym), 1238 (4/18/2016 –  
11 Plaintiff is depressed again and her mother told her that she had been going through a manic  
12 episode – had been going to the gym multiple times a day); *see also* AR 1246 (5/11/2016 –  
13 Plaintiff reported feeling better, going to the gym four times a week, going out with her  
14 friend), 1250 (6/9/2016 – Plaintiff reported feeling depressed again, having a hard time  
15 getting out of bed).) During her depressive periods, Plaintiff struggles to bathe, leave her  
16 house, go out in public, and be around people – all of which would hinder her ability to  
17 regularly show up for work. Plaintiff also suffers from compulsive behaviors – requiring her  
18 total number of steps to be divisible by three and scrubbing invisible spots for hours,  
19 sometimes in the middle of night – that would also seemingly interfere with her ability to  
20 regularly show up for work. Finally, the ALJ does not cite, and the record does not reveal,  
21 that Plaintiff engaged in any activities of daily living that required Plaintiff to leave the  
22 house – or even sustain basic interactions with people who are neither a close friend or  
23 relative nor a trained mental health professional – five days a week. Accordingly, the ALJ's  
24 reference to Plaintiff's activities of daily living is not a specific and legitimate reason  
25 supported by substantial evidence in the record for discounting Dr. Jack's assessment that  
26 Plaintiff would miss work three times a month.  
27  
28

1 Because the ALJ failed to articulate any specific and legitimate reason supported by  
2 substantial evidence for discounting Dr. Jack’s opinion that Plaintiff would miss work three  
3 times a month, the matter must be remanded for further consideration of this portion of Dr.  
4 Jack’s opinion.

5  
6 **B. ALJ’s Evaluation of the Opinion of Marysol Rezanov, LCSW**

7  
8 **1. Treatment Records and Opinion of Marysol Rezanov, LCSW**

9  
10 Plaintiff further challenges the ALJ’s rejection of the opinion of one of her treating  
11 therapists, Marysol Rezanov, LCSW. (Joint Stip. at 3.) On an undated Outpatient Treatment  
12 Request Form directed to the Health Plan of Nevada’s mental health care component,  
13 Behavioral Health Care Options, Inc., Rezanov identified Plaintiff’s diagnosis as “Bipolar  
14 Dx,” reported that Plaintiff experiences “feelings of loneliness, SI w/o plan, low self-  
15 esteem,” and indicated that the planned interventions would be treatment once a week. (AR  
16 1160.) In January 2015, Rezanov received authorization from both Plaintiff and the Health  
17 Plan of Nevada for her practice, Nueva Vida Mental Health, to provide outpatient  
18 therapeutic services to Plaintiff. (AR 1161; *see also id.* at 1150-51.) A few months later, on  
19 March 25, 2015, Plaintiff was discharged from Rezanov’s care because she was told by her  
20 psychiatrist that she needed to switch therapists. (AR 1159.)

21  
22 There are no notes reflecting the substance of Rezanov’s treatment of Plaintiff. (*See*  
23 *generally* AR 1150-61.) Nevertheless, on October 3, 2016, more than a year after Plaintiff  
24 was discharged from Rezanov’s care, Rezanov completed a check-the-box Mental  
25 Impairment Questionnaire on which she indicated that Plaintiff’s symptoms included:  
26 oddities of thought, perception, and behavior; sleep disturbance; personality change;  
27 persistent disturbances of mood or affect; emotional withdrawal and/or isolation; emotional  
28 lability and impairment in impulse control; blunt affect; illogical thinking; delusions or

1 paranoid thinking; flight of ideas; inflated self-esteem; recurrent severe panic attacks;  
2 recurrent and intrusive recollections of a traumatic experience, which are source of marked  
3 distress; pathologically inappropriate suspiciousness or hostility; pathological dependence,  
4 passivity, or aggressivity; intense and unstable interpersonal relationships and impulsive and  
5 damaging behavior. (AR 1287.) Rezanov left blank the space provided to respond to the  
6 question “Describe the clinical findings including results of mental status examination which  
7 demonstrate the severity of your patient’s mental impairments and symptoms.” (AR 1288.)  
8 She similarly wrote “unknown” in response to a question about any side effects that Plaintiff  
9 experienced from medications. (AR 1288.) Rezanov opined that Plaintiff was not capable  
10 of performing a full-time job, working eight hours a day, five days per week, on a regular  
11 and continuing basis and had the following functional limitations: moderate limitation in the  
12 ability to maintain attention and concentration for extended periods; moderate limitation in  
13 the ability to perform activities within a schedule, be punctual, and maintain regular  
14 attendance; extreme limitation in the ability to work in coordination with or proximity to  
15 others without being distracted; moderate limitation in the ability to make simple work  
16 related decisions; extreme limitation in the ability to interact appropriately with the general  
17 public; marked limitation in the ability to accept instructions and respond appropriately to  
18 criticism from supervisors; extreme limitation in the ability to get along with coworkers  
19 without distracting them or exhibiting extreme behaviors; extreme limitation in the ability to  
20 maintain socially appropriate behavior and adhere to basic standards of neatness/cleanliness;  
21 and marked limitation in the ability to respond appropriately to changes in the work setting.  
22 (AR 1288.)

## 23 24 **2. ALJ’s Opinion and Discussion**

25  
26 The ALJ discounted Rezanov’s opinion, stating that Rezanov is not an “acceptable  
27 medical source,” the limitations Rezanov assessed “are not consistent with the medical  
28 evidence,” and Rezanov’s opinion is dated six months after her treatment relationship with

1 Plaintiff ended. (AR 138.) When the opinion at issue comes from a medical professional  
2 who is not an “acceptable medical source” under the regulations, the ALJ has more leeway  
3 to discount it. *See* 20 C.F.R. §§ 404.1502 (defining the term “acceptable medical source”),  
4 416.902 (same), 20 C.F.R. §§ 404.1527(a)(2) (defining “treating source” as the “acceptable  
5 medical source who provides [the claimant], or has provided [the claimant], with medical  
6 treatment or evaluation and who has, or has had, an ongoing treatment relationship with [the  
7 claimant]”), 416.927(a)(2) (same). Specifically, the opinions of a non-acceptable medical  
8 source, such as a licensed clinical social worker, are entitled only to the weight warranted by  
9 the facts of the case, 20 C.F.R. §§ 404.1527(f)(1), 416.927(f)(1), and the ALJ may discount  
10 her opinions after articulating “germane” reasons for doing so. *See Britton v. Colvin*, 787  
11 F.3d 1011, 1013 (9th Cir. 2015). Nevertheless, in some circumstances, “an opinion from a  
12 medical source who is not an acceptable medical source . . . may outweigh the medical  
13 opinion of an acceptable medical source, including the medical opinion of a treating source.”  
14 20 C.F.R. §§ 404.1527(f)(1), 416.927(f)(1).

15  
16 The Court finds that, to the extent that the ALJ may have failed to articulate germane  
17 reasons for discounting Rezanov’s opinion, the error is harmless because, despite any  
18 possible error, “the agency’s path may reasonably be discerned.” *Brown-Hunter*, 806 F.3d at  
19 492. Specifically, there are no treatment records supporting Rezanov’s opinion, she  
20 identified no symptoms or clinical findings that supported her opinion, she also admitted to  
21 having no knowledge of any side effects associated with Plaintiff’s medications, and her  
22 purported period of treatment of Plaintiff was extraordinarily short – no more than three  
23 months. In light of the foregoing, the Court can reasonably discern from the record that the  
24 ALJ correctly determined that the facts of the case do not warrant crediting Rezanov’s  
25 opinion.

26 \\  
27 \\  
28 \\  
29

1     **II.     The ALJ’s Evaluation of Plaintiff’s Credibility**

2  
3             The second issue in dispute is whether the ALJ properly evaluated the credibility of  
4 Plaintiff’s statements and testimony about the severity of her symptoms and functional  
5 limitations. (Joint Stip. at 23.) Plaintiff’s description of her symptoms and functional  
6 limitations is discussed in greater detail above. The ALJ found that Plaintiff’s medically  
7 determinable impairments could reasonably be expected to cause the alleged symptoms, but  
8 Plaintiff’s statements concerning the intensity, persistence, and limiting effects of these  
9 symptoms were not entirely consistent with the medical evidence and other evidence in the  
10 record. (AR 136.) The ALJ explained that Plaintiff’s complaints of disabling symptoms and  
11 limitations were not credible given Plaintiff’s daily activities, which included crocheting as a  
12 hobby, shopping in stores during less crowded hours, preparing sandwiches, going to the  
13 gym, and going out with a friend, and interacting with family and friends via text and social  
14 media. (AR 136.) Secondly, the ALJ explained that Plaintiff had engaged in some work  
15 activity – albeit, not substantial gainful activity – after the alleged onset date. (AR 137-38.)  
16 Specifically, the ALJ noted that Plaintiff had done some dog walking work and also reported  
17 selling things on eBay. (AR 137.) Finally, the ALJ observed that as of April 2016, Plaintiff  
18 reported feeling better, and he asserted that Plaintiff’s GAF scores had gone up over time,  
19 suggesting that her condition has improved. (AR 136) (citing Exhibits 1F1, 4F137, 8F, and  
20 14F3).

21  
22             **A. Applicable Law**

23  
24             An ALJ must make two findings before determining that a claimant’s pain or symptom  
25 testimony is not credible. *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir.  
26 2014). “First, the ALJ must determine whether the claimant has presented objective medical  
27 evidence of an underlying impairment which could reasonably be expected to produce the  
28 pain or other symptoms alleged.” *Id.* (quoting *Lingenfelter*, 504 F.3d at 1036). “Second, if

1 the claimant has produced that evidence, and the ALJ has not determined that the claimant is  
2 malingering, the ALJ must provide specific, clear and convincing reasons for rejecting the  
3 claimant’s testimony regarding the severity of the claimant’s symptoms” and those reasons  
4 must be supported by substantial evidence in the record. *Id.*; *see also Marsh v. Colvin*, 792  
5 F.3d 1170, 1174 n.2 (9th Cir. 2015); *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1161  
6 (9th Cir. 2008) (court must determine “whether the ALJ’s adverse credibility finding . . . is  
7 supported by substantial evidence under the clear and convincing standard”).

8  
9 In weighing a plaintiff’s credibility, the ALJ may consider many factors, including:  
10 “(1) ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying,  
11 prior inconsistent statements concerning the symptoms, and other testimony . . . that appears  
12 less than candid; (2) unexplained or inadequately explained failure to seek treatment or to  
13 follow a prescribed course of treatment; and (3) the claimant’s daily activities.” *Tommasetti*  
14 *v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). However, “subjective pain testimony cannot  
15 be rejected on the *sole* ground that it is not fully corroborated by objective medical  
16 evidence.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (emphasis added)  
17 (citation omitted). Further, an ALJ may rely on a plaintiff’s daily activities to support an  
18 adverse credibility determination only when those activities either: “contradict [the  
19 plaintiff’s] other testimony”; or “meet the threshold for transferable work skills” – that is,  
20 where the plaintiff “is able to spend a substantial part of his or her day performing household  
21 chores or other activities that are transferable to a work setting.” *Orn*, 495 F.3d at 639;  
22 *Smolen v. Chater*, 80 F.3d 1273, 1284 n. 7 (9th Cir. 1996). Finally, the ALJ must  
23 “specifically identify the testimony [from the claimant that] she or he finds not to be credible  
24 and . . . explain what evidence undermines the testimony.” *Treichler*, 775 F.3d at 1102  
25 (quoting *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001)). “General findings  
26 are insufficient.” *Brown-Hunter*, 806 F.3d at 493 (quoting *Reddick v. Chater*, 157 F.3d 715,  
27 722 (9th Cir. 1998)).



1           **B. Discussion**

2  
3           The ALJ’s reasons for finding Plaintiff’s statements and testimony are not specific,  
4 clear, convincing, and supported by substantial evidence in the record.

5  
6                   **1. Plaintiff’s Daily Activities**

7  
8           The ALJ’s first reason for finding Plaintiff less than fully credible was Plaintiff’s daily  
9 activities, and he specifically mentioned her ability to crochet as a hobby, shop during less  
10 crowded hours, prepare sandwiches, go the gym, go out with a friend, and interact with  
11 family and friends via text and social media. (AR 136.) As stated above, an ALJ may rely  
12 on a plaintiff’s daily activities to support an adverse credibility determination only when  
13 those activities either: “contradict [the plaintiff’s] other testimony”; or “meet the threshold  
14 for transferable work skills” – that is, where the plaintiff “is able to spend a substantial part  
15 of his or her day performing household chores or other activities that are transferable to a  
16 work setting.” *Orn*, 495 F.3d at 639. The ALJ does not state, and there is no indication in  
17 the record, that Plaintiff was able to spend a substantial portion of her day performing  
18 household chores or other activities that are transferable to a work setting. Instead, the ALJ  
19 asserts that Plaintiff’s complaints and allegations of total disability are inconsistent with her  
20 ability to: crochet, shop (albeit, early in the morning or late at night when she is unlikely to  
21 encounter many other people are at the store), make sandwiches, and text; and, during her  
22 manic periods, go to the gym and go out with a friend.

23  
24           However, “[d]isability does not mean that a claimant must vegetate in a dark room  
25 excluded from all forms of human and social activity.” *Cooper v. Bowen*, 815 F.2d 557, 561  
26 (9th Cir. 1987) (internal quotation marks and citation omitted); *see also Vertigan v. Halter*,  
27 260 F.3d 1044, 1050 (9th Cir. 2001) (“mere fact that a plaintiff has carried on certain daily  
28 activities, such as grocery shopping, driving a car, or limited walking for exercise, does not

1 in any way detract from her credibility as to her overall disability”). Further, Plaintiff’s  
2 limited ability to shop coupled with her continued ability and interest in performing activities  
3 that are easily performed alone, at home, and in pajamas – crocheting, preparing sandwiches  
4 and microwave meals, and texting or using social media – do not indicate that Plaintiff  
5 retains a greater functional capacity than what she has alleged.

6  
7 Similarly, the ALJ errs in relying on Plaintiff’s description of her abilities during her  
8 occasional manic periods – which include going to the gym and going out with a friend – to  
9 find her description of her abilities during her more common state of depression less than  
10 fully credible. As stated above, Plaintiff’s periods of mania tend to last no more than a  
11 month, are coupled with other troubling symptoms, and are not indicative of her activities  
12 and functional capacity most of the time. Accordingly, the ALJ’s references to Plaintiff’s  
13 daily activities is not a clear and convincing reason supported by substantial evidence for  
14 finding Plaintiff’s statements and testimony less than fully credible.

## 15 16 **2. Plaintiff’s Work Activity After the Alleged Onset Date**

17  
18 The ALJ’s second reason for finding Plaintiff’s statements less than fully credible is  
19 that she engaged in some work activity after the alleged onset date, apparently referring to  
20 her intermittent work with dogs. (*See* AR 133, 137-38.) The ALJ states that Plaintiff’s  
21 ability to take care of friends and relatives’ dogs after the alleged onset date suggests that her  
22 activities are, in fact, greater than what she alleged. (AR 137-38.) The ALJ also noted that  
23 Plaintiff reported selling things on eBay. (AR 137.) As stated above, Plaintiff’s work as a  
24 dog sitter was very occasional – no more than six times a year, always for friends or  
25 relatives, and never lasted more than a few days at a time. Additionally, Plaintiff testified  
26 that she never earned more than \$100 a month from this work, which suggests that, given her  
27 rate of pay (\$25/hour), she never dog sat for more than four days during the course of a  
28 single month. There is also no evidence in the record concerning Plaintiff’s tasks and

1 responsibilities while dog sitting, accordingly there is no evidence that her brief and sporadic  
2 work with dogs required her to do anything beyond the functional capacity she has alleged.  
3 Similarly, Plaintiff's ability to sell some things on eBay, a task that, like most of Plaintiff's  
4 preferred activities, can largely be performed at home alone in one's pajamas, is not  
5 inconsistent with her allegations regarding the severity of her symptoms and functional  
6 limitations.

### 7 8 **3. Plaintiff's Improvement**

9  
10 The ALJ's third and final reason for finding Plaintiff less than fully credible was that  
11 the record indicated that Plaintiff's condition had improved over time. (*See* AR 136.)  
12 Specifically, the ALJ noted that, as of April 2016, Plaintiff reported feeling better, and he  
13 observed that Plaintiff's GAF scores went up over time. (AR 136) (citing Exhibits 1F1,  
14 4F137, 8F, and 14F3).

15  
16 With respect to Plaintiff's April 2016 report, as the Court has repeatedly noted above,  
17 Plaintiff was in a state of mania. Specifically, on April 14, 2016, Plaintiff reported to her  
18 therapist, Huerta, that she had more energy and had been feeling better, going to the gym,  
19 dog walking, and going out with a friend. (AR 1236.) Four days later, Plaintiff saw Dr.  
20 Folsome and reported that things had been going well until two days earlier and she now felt  
21 "not so great," with a depressed mood, crying spells, anhedonia, decreased appetite, sleeping  
22 during the day, and compulsive counting and cleaning behaviors. (AR 1238.) Plaintiff told  
23 Dr. Folsome that she has a hard time identifying episodes of mania but that her mother had  
24 said Plaintiff had been manic for the past couple of weeks: "talking too much and mood  
25 elevated . . . , going to the gym several times a day, decreased need for sleep . . . , creative  
26 and random ideas." (AR 1238.) Dr. Folsome responded to this report by increasing  
27 Plaintiff's Seroquel dosage. (AR 1238.) Given that Plaintiff's report of improvement in  
28 April 2016 was fleeting and the result of mania, rather than actual longitudinal improvement,

1 it was a not a convincing reason supported by substantial evidence for finding Plaintiff's  
2 statements less than fully credible. *See also Garrison*, 759 F.3d at 1017 (“it is error for an  
3 ALJ to pick out a few isolated instances of improvement over a period of months or years  
4 and to treat them as a basis for concluding a claimant is capable of working”).  
5

6 The ALJ's references to Plaintiff's GAF scores is similarly unavailing. The ALJ's  
7 citations are primarily to Plaintiff's GAF scores either upon admission or discharge from her  
8 numerous psychiatric hospitalizations. The first, Exhibit 1F1, refers to Plaintiff's GAF score  
9 of 25<sup>5</sup> on June 30, 2011 upon her voluntary admission to Vistal Del Mar Hospital, at which  
10 time Plaintiff was presenting as depressed and suicidal. (AR 423.) The second, Exhibit  
11 4F137, refers to Plaintiff's GAF score of 30 on May 14, 2012 upon her voluntary admission  
12 to Northridge Hospital Medical Center, at which time Plaintiff was experiencing significant  
13 suicidal ideation, limited insight, and questionable judgment. (AR 906-07.) In contrast, the  
14 third, Exhibit 8F, refers to Plaintiff's August 16, 2014 examination by the consulting  
15 psychiatrist, Norma R. Aguilar, M.D., who assessed a GAF score of 60-65, indicating  
16 moderate to mild symptoms. (AR 970.) The fourth, Exhibit 14F3, refers to Plaintiff's GAF  
17 score of 55 in April 2015 upon her discharge from a seven-day psychiatric hospitalization at  
18 Desert Parkway Behavioral Healthcare Hospital. (AR 1039-40.) The hospital records  
19 reflect that Plaintiff's psychiatrist at the time, Dr. Rosa Bellota, referred Plaintiff for  
20 hospitalization at the Desert Parkway Behavioral Healthcare Hospital based on Plaintiff's  
21 depression resulting in a significant loss of functioning and that at the time Plaintiff was  
22 admitted she was assessed with a GAF score of 50. (AR 1038.) GAF scores between of 41-  
23 50 indicate serious symptoms (e.g., suicidal ideation, severe obsessional rituals) or serious  
24

---

25 <sup>5</sup> A GAF score of 21-30 indicates “behavior is considerably influenced by delusions or hallucinations or serious  
26 impairment in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal  
27 preoccupation) or inability to function in almost all areas (e.g., stays in bed all day; no job, home, or friends).” *See*  
28 *Diagnostic and Statistical Manual of Mental Disorders (“DSM-IV”)* 34 (revised 4th ed. 2000). The Commissioner has  
stated that the GAF scale “does not have a direct correlation to the severity requirements in [the] mental disorders  
listings,” 65 Fed. Reg. 50764, 50764-65 (Aug. 21, 2000), and the most recent edition of the DSM “dropped” the GAF  
scale. *Diagnostic And Statistical Manual Of Mental Disorders* 16 (5th ed. 2012).

1 impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a  
2 job). DSM-IV 34 (revised 4th ed. 2000).

3  
4 Contrary to the ALJ's characterization of these GAF scores, they do not show  
5 improvement that conflicts with Plaintiff's allegations regarding the severity of symptoms  
6 and functional limitations. Instead, the ALJ's list of Plaintiff's GAF scores reveals the  
7 extent to which Plaintiff's symptoms "wax and wane in the course of treatment." *Cf.*  
8 *Garrison*, 759 F.3d at 1017 ("[I]t is error to reject a claimant's testimony merely because  
9 symptoms wax and wane in the course of treatment. Cycles of improvement and debilitating  
10 symptoms are a common occurrence."). Most significantly, despite being assessed a GAF  
11 score of 60-65 during her August 2014 examination by the consulting psychiatrist, nine  
12 months later Plaintiff's condition deteriorated to the point that her treating psychiatrist  
13 referred her for a seven-day psychiatric hospitalization. The record also indicates that this  
14 was Plaintiff's sixth psychiatric hospitalization, with the prior hospitalization occurring two  
15 years prior in January 2013 when she presented at the Woodland Hills Medical Center with  
16 suicidal ideation with a plan. (AR 936-940; *see also* AR 1199 (six psychiatric  
17 hospitalizations between 2011 and 11/12/2015).) Accordingly, the ALJ's third reason for  
18 finding Plaintiff less than fully credible – her "improvement" as based on her GAF scores  
19 during the preceding five years – is not a convincing reason supported by substantial  
20 evidence for the ALJ's adverse credibility determination.

### 21 22 **III. Remand is Warranted**

23  
24 Based on the foregoing, the ALJ erred both in his evaluation of Dr. Jack's opinion that  
25 Plaintiff would miss three days of work a month due to psychiatric symptoms and in his  
26 evaluation of the credibility of Plaintiff's statements about her symptoms and functional  
27 limitations. The decision whether to remand for further proceedings or order an immediate  
28 award of benefits is within the district court's discretion. *Harman v. Apfel*, 211 F.3d 1172,

1 1175-78 (9th Cir. 2000). A district court may remand for an award of benefits when the  
2 following three conditions are satisfied: “(1) the record has been fully developed and further  
3 administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide  
4 legally sufficient reasons for rejecting evidence, whether claimant testimony or medical  
5 opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would  
6 be required to find the claimant disabled on remand.” *Garrison*, 759 F.3d at 1020. The third  
7 of these conditions “incorporates . . . a distinct requirement of the credit-as-true rule, namely  
8 that there are no outstanding issues that must be resolved before a determination of disability  
9 can be made.” *Id.* n.26; *see also Ballardarez v. Colvin*, No. CV 13-9490-MAN, 2014 WL  
10 7185342, at \*15 (C.D. Cal. Dec. 16, 2014) (declining to award for benefits because, *inter*  
11 *alia*, the VE did not receive an opportunity to hypothesize about whether a claimant of  
12 plaintiff’s age, education, and work experience who has a residual functional capacity based  
13 on a proper evaluation of the medical record could perform work that exists in significant  
14 numbers in the national economy). However, even if those three requirements are met, the  
15 Court retains “flexibility” in determining the appropriate remedy and may remand for further  
16 proceedings “when the record as a whole creates serious doubt as to whether the claimant is,  
17 in fact, disabled within the meaning of the Social Security Act.” *Burrell v. Colvin*, 775 F.3d  
18 1133, 1141 (9th Cir. 2014) (quoting *Garrison*, 759 F.3d at 1021).

19  
20 In this case, the ALJ asked the VE whether a claimant of Plaintiff’s age, education,  
21 and work experience who has Plaintiff’s residual functional capacity could maintain any of  
22 the representative occupations previously identified by the VE – cleaner (DOT 381.687-  
23 018), polisher (DOT 761.684-026), and marker (DOT 209.587-034) – if she would miss  
24 three days of work a month due to psychiatric symptoms. (AR 79.) The VE stated, “No,  
25 they would not be able to maintain these jobs. These workers would certainly call attention  
26 to themselves, and there would be a significant reduction in productivity, and this person  
27 would not be maintained in a work setting.” (AR 79.) The VE added that this opinion was  
28 “not in the DOT” but, rather, was based on his “accumulated professional knowledge and

1 experience.” (AR 79.) The ALJ did not then ask whether other jobs exist in significant  
2 numbers in the national economy that a claimant of Plaintiff’s age, education, and work  
3 experience who has Plaintiff’s residual functional capacity could perform if she would miss  
4 three days of work a month due to psychiatric symptoms. It is also unclear whether the VE’s  
5 testimony was that an individual with these limitations “would not be maintained” in *any*  
6 work setting, or, alternatively, that she would not be maintained in the work setting  
7 associated with the representative occupations of cleaner (DOT 381.687-018), polisher  
8 (DOT 761.684-026), and marker (DOT 209.587-034). (AR 139.) In light of the foregoing,  
9 the Court cannot say that further administrative proceedings would serve no useful purpose  
10 and, if the improperly discredited evidence were credited as true, the ALJ would be required  
11 to find Plaintiff disabled on remand. *See Garrison*, 759 F.3d at 1020. This case, then, is not  
12 the “rare exception” in which the credit as true rule should be applied and the matter  
13 remanded for the calculation and award of benefits. *See Leon v. Berryhill*, 874 F.3d 1130,  
14 1133 (9th Cir. 2017). Therefore, the Court remands for further consideration.

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1 **CONCLUSION**

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3 For the reasons stated above, IT IS ORDERED that the decision of the Commissioner  
4 is REVERSED, and this case is REMANDED for further proceedings consistent with this  
5 Memorandum Opinion and Order.

6

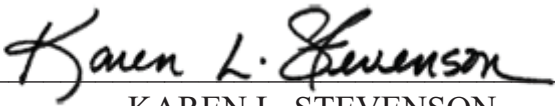
7 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this  
8 Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for  
9 defendant.

10

11 LET JUDGMENT BE ENTERED ACCORDINGLY

12

13 DATE: June 12, 2019

14   
15 KAREN L. STEVENSON  
16 UNITED STATES MAGISTRATE JUDGE