

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

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GEORGIA D. TUCKER,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Case No. EDCV 08-0551-JTL

MEMORANDUM OPINION AND ORDER

PROCEEDINGS

On April 30, 2008, Georgia D. Tucker (“plaintiff”) filed a Complaint seeking review of the Social Security Administration’s denial of her application for Supplemental Security Income benefits and Disability Insurance Benefits. On May 8, 2008, plaintiff filed a Consent to Proceed Before United States Magistrate Judge Jennifer T. Lum. On August 26, 2008, Michael J. Astrue, Commissioner of Social Security (“defendant”), filed a Consent to Proceed Before United States Magistrate Judge Jennifer T. Lum. Thereafter, on October 27, 2008, defendant filed an Answer to the Complaint. On December 29, 2008, the parties filed their Joint Stipulation.

The matter is now ready for decision.

///

///

BACKGROUND

1
2 On July 1, 2005, plaintiff filed applications for Disability Insurance Benefits and
3 Supplemental Social Security Income benefits alleging an onset date of April 21, 2001. (See
4 Administrative Record ["AR"] at 85, 87-90, 91-95). The Commissioner denied plaintiff's
5 applications for benefits both initially and upon reconsideration. (AR at 35, 36, 37, 38).
6 Thereafter, plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). (AR at
7 66).

8 On October 26, 2007, the ALJ conducted a hearing in San Bernardino, California. (See
9 AR at 10-34). Plaintiff appeared at the hearing with counsel and testified. (AR at 10, 12-29).
10 Corinne Porter, a vocational expert, also testified at the hearing. (AR at 29-34). On November
11 30, 2007, the ALJ issued a decision denying benefits to plaintiff. (AR at 42-50). In his decision,
12 the ALJ determined that plaintiff had the following severe impairments: a disorder of the cervical
13 spine and a disorder of the lumbar spine. (AR at 44). The ALJ determined that plaintiff did not
14 have an impairment or combination of impairments that meet or equal the criteria contained in
15 the Commissioner's Listing of Impairments, 20 C.F.R. Section 404, Subpart P, Appendix 1. (AR
16 at 44-45). The ALJ determined that plaintiff retained the residual functional capacity to perform
17 a significant range of sedentary work.¹ (AR at 45). The ALJ determined that plaintiff's
18 statements concerning the impact of her impairments on her ability to work were not entirely
19 credible given the inconsistency in her statements and the inconsistency between her
20 exaggerated symptoms of pain and the activity level she described to the consultative
21 examiners, her minimal and conservative medical treatment, and the lack of objective findings
22 supporting her allegations. (AR at 45-48). The ALJ also rejected the opinion of plaintiff's
23 treating physician, Dr. Viet Dao, regarding plaintiff's physical residual functional capacity as
24

25
26 ¹ Specifically, the ALJ found that plaintiff can occasionally lift and/or carry 20 pounds and frequently
27 10 pounds; stand and/or walk two hours in an eight hour work day and sit for six hours; occasionally
28 climb ramps and stairs, but is precluded from ladders, scaffolds and ropes; occasionally balance, stoop,
bend, crouch, kneel and less than occasionally crawl; is precluded from walking on even terrain; is
limited to moderate exposure to vibration; and should avoid work environments with dangerous or fast
moving machinery or work at unprotected heights. (AR at 45).

1 **STANDARD OF REVIEW**

2 Under 42 U.S.C. Section 405(g), this Court reviews the ALJ's decision to determine
3 whether the ALJ's findings are supported by substantial evidence and whether the proper legal
4 standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial
5 evidence means "more than a mere scintilla" but less than a preponderance. Richardson v.
6 Perales, 402 U.S. 389, 401 (1971); Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996).

7 Substantial evidence is "such relevant evidence as a reasonable mind might accept as
8 adequate to support a conclusion." Richardson, 402 U.S. at 401. This Court must review the
9 record as a whole and consider adverse as well as supporting evidence. Morgan v. Comm'r,
10 169 F.3d 595, 599 (9th Cir. 1999). Where evidence is susceptible to more than one rational
11 interpretation, the ALJ's decision must be upheld. Robbins v. Soc. Sec. Admin., 466 F.3d 880,
12 882 (9th Cir. 2006).

13
14 **DISCUSSION**

15 **A. The Sequential Evaluation**

16 A claimant is disabled under Title II of the Social Security Act if he or she is unable "to
17 engage in any substantial gainful activity by reason of any medically determinable physical or
18 mental impairment which can be expected to result in death or . . . can be expected to last for
19 a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The Commissioner
20 has established a five-step sequential process to determine whether a claimant is disabled. 20
21 C.F.R. §§ 404.1520, 416.920.

22 The first step is to determine whether the claimant is presently engaging in substantially
23 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
24 in substantially gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S.
25 137, 141 (1987). Second, the ALJ must determine whether the claimant has a severe
26 impairment. Parra, 481 F.3d at 746. Third, the ALJ must determine whether the impairment
27 is listed, or equivalent to an impairment listed, in Appendix I of the regulations. Id. If the
28 impediment meets or equals one of the listed impairments, the claimant is presumptively

1 disabled. Bowen, 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment
2 prevents the claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45
3 (9th Cir. 2001). If the claimant cannot perform his or her past relevant work, the ALJ proceeds
4 to the fifth step and must determine whether the impairment prevents the claimant from
5 performing any other substantially gainful activity. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir.
6 2000).

7 The claimant bears the burden of proving steps one through four, consistent with the
8 general rule that at all times, the burden is on the claimant to establish his or her entitlement
9 to disability insurance benefits. Parra, 481 F.3d at 746. Once this prima facie case is
10 established by the claimant, the burden shifts to the Commissioner to show that the claimant
11 may perform other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir.
12 2006).

13 **B. Viet Dao, M.D.**

14 Plaintiff contends that the ALJ failed to properly consider the opinion of Viet Dao, M.D.,
15 plaintiff's treating physician, with respect to plaintiff's mental limitations regarding her ability to
16 do work related activities. (See Joint Stipulation at 8-9).

17 On August 11, 2006, Dr. Dao completed a Work Capacity Evaluation (Mental) form
18 regarding plaintiff's ability to perform work-related activities on a daily basis in a regular work
19 setting. (AR at 235-36). In the form, Dr. Dao indicated that plaintiff had "moderate" limitations²
20 in three areas, including her abilities to remember locations and work-like procedures, maintain
21 attention and concentration for extended periods, and set realistic goals or make plans
22 independently of others. (Id.). Dr. Dao also indicated that plaintiff had "slight" limitations³ in
23 thirteen areas, including her abilities to understand and remember very short and simple
24 instructions, carry out very short and simple instructions, perform activities within a schedule,
25 maintain regular attendance and be punctual within customary tolerances, sustain an ordinary

26 ² "Moderate" is defined as "[m]ore than slight but less than marked." (AR at 235).

27 ³ "Slight" is defined as "[s]ome mild limitation in this area, but generally functions pretty well." (AR
28 at 235).

1 routine without special supervision, work in coordination with or in proximity to others without
2 being distracted by them, to make simple work-related decisions, interact appropriately with the
3 general public, ask simple questions or request assistance, accept instructions and respond
4 appropriately to criticism from supervisors, get along with co-workers or peers without
5 distracting them or exhibiting behavioral extremes, maintain socially appropriate behavior and
6 adhere to basic standards of neatness and cleanliness, respond appropriately to changes in
7 the work setting, and be aware of normal hazards and take appropriate precautions. (AR at
8 235-36). Dr. Dao also indicated that plaintiff was not a malingerer, plaintiff's mental impairment
9 had lasted or could be expected to last at least twelve (12) months, and he expected plaintiff's
10 mental impairments or treatment would cause plaintiff to miss three or more days of work each
11 month. (AR at 236).

12 In his decision, the ALJ determined that plaintiff had "not alleged or credibly established
13 any mental impairment." (AR at 48). The ALJ relied on the opinion of Linda M. Smith, M.D.,
14 the psychiatric consultative examiner who had performed a complete psychiatric evaluation of
15 plaintiff on December 6, 2005. (AR at 48; see AR at 196-201). Based on her examination of
16 plaintiff, Dr. Smith opined that plaintiff was not functionally impaired in her abilities to
17 understand, remember or complete simple or complex commands, interact appropriately with
18 supervisors, co-workers or the public, comply with job rules such as safety and attendance,
19 respond to change in a normal workplace setting, and maintain persistence and pace in a
20 normal workplace setting. (AR at 201). In determining that plaintiff did not have a severe
21 mental impairment, the ALJ stated:

22 [Plaintiff] reported to the psychiatric consultative examiner, Dr.
23 Smith, that "her main problem [was] physical in nature and that
24 would be the main reason why she would have trouble working."
25 [AR at 196]. I have given great weight to the State Agency and the
26 consultative examiners and find that their conclusions are
27 consistent with the medical evidence and the admissions of the
28 claimant.

1 (AR at 48).

2 Plaintiff argues that the ALJ failed to provide legally sufficient reasons for rejecting the
3 opinion of Dr. Dao regarding plaintiff's mental limitations. (See Joint Stipulation at 8). Plaintiff
4 further argues that, if the ALJ had any doubts regarding the clinical findings that supported Dr.
5 Dao's Work Capacity Evaluation (Mental) form, the ALJ had a legal duty to develop the record,
6 but failed to do so. (See Joint Stipulation at 9).

7 The ALJ is charged with determining a claimant's residual functional capacity based on
8 an evaluation of the evidence as a whole. See 20 C.F.R. § 416.945. The medical opinion of
9 a treating physician is entitled to special weight because "he is employed to cure and has a
10 greater opportunity to know and observe the patient as an individual." See 20 C.F.R. §
11 404.1527; Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998); Lester v. Chater, 81 F.3d 821,
12 830 (9th Cir. 1995) (as amended) (the opinions of treating physicians should be given more
13 weight than the opinions of doctors who do not treat the claimant); McAllister v. Sullivan, 888
14 F.2d 599, 602 (9th Cir. 1989). "The treating physician's opinion is not, however, necessarily
15 conclusive as to either a physical condition or the ultimate issue of disability." Magallanes v.
16 Bowen, 881 F.2d 747, 751 (9th Cir. 1989). If a treating physician's opinion is well supported
17 by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent
18 with the other substantial evidence in the record, it will be given controlling weight. 20 C.F.R.
19 § 404.1527.

20 An ALJ may properly reject the opinion of an uncontroverted treating physician only for
21 "clear and convincing" reasons supported by substantial evidence in the record. Lester, 81
22 F.3d at 830. An ALJ may reject the controverted opinion of a treating physician only by
23 providing specific and legitimate reasons for doing so that are supported by substantial
24 evidence in the record. See Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007); Connett v.
25 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003). The ALJ can meet this burden by setting out a
26 "detailed and thorough summary of the facts and conflicting clinical evidence, stating his
27 interpretation thereof, and making findings." Reddick, 157 F.3d at 725; Cotton v. Bowen, 799
28 F.2d 1403, 1408 (9th Cir. 1986). More than just rendering conclusions, the ALJ must set forth

1 interpretations and explain why his interpretations, rather than the physician's, are correct. Orn,
2 495 F.3d at 632; Reddick, 157 F.3d at 725; Embrey v. Bowen, 849 F.2d 418, 421-22 (9th Cir.
3 1988).

4 An ALJ may rely on the absence of objective findings to reject a treating physician's
5 opinion. Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (inadequate clinical findings
6 provide clear and convincing reasons for ALJ to reject treating physician's opinion); Buckhart
7 v. Bowen, 856 F.2d 1335, 1339 (9th Cir. 1988) (proper to disregard uncontroverted treating
8 physician's opinion when he fails to provide objective descriptions of medical findings). In
9 addition, an ALJ may reject all or part of an examining physician's report if it contains
10 inconsistencies, is conclusory, or inadequately supported by clinical findings. Thomas v.
11 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). However, a finding that a treating physician's
12 opinion is not well supported by medically acceptable clinical and laboratory diagnostic
13 techniques or is not inconsistent with the other substantial evidence in the record, only means
14 that the opinion is not entitled to controlling weight. Social Security Ruling ("SSR") 96-2p⁴ ("A
15 finding that a treating source's medical opinion is not entitled to controlling weight does not
16 mean that the opinion is rejected."). The opinions rendered by treating physicians are still
17 entitled to deference and must be weighed using all of the factors provided in 20 C.F.R. Section
18 404.1527, such as the length of the treatment relationship, frequency of examination, and the
19 nature and extent of the treatment relationship. SSR 96-2p; 20 C.F.R. § 404.1527(d)(2).

20 As plaintiff's treating physician, Dr. Dao's opinion is entitled to special weight. See Orn,
21 495 F.3d at 631-34. As discussed above, in order to properly disregard the controverted
22 opinion of Dr. Dao, the ALJ must set forth specific and legitimate reasons for doing so that are
23 supported by substantial evidence in the record. See Orn, 495 F.3d at 632; Connett, 340 F.3d
24 at 874; Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001) ("The ALJ may not reject the
25 opinion of a treating physician, even if it is contradicted by the opinions of other doctors, without

26
27 ⁴ Social Security Rulings are issued by the Commissioner to clarify the Commissioner's regulations
28 and policies. Bunnell v. Sullivan, 947 F.2d 341, 346 n.3 (9th Cir. 1991). Although they do not have the
force of law, they are nevertheless given deference "unless they are plainly erroneous or inconsistent
with the Act or regulations." Han v. Bowen, 882 F.2d 1453, 1457 (9th Cir. 1989).

1 providing specific and legitimate reasons supported by substantial evidence in the record."
2 (internal quotation marks omitted)). Here, the ALJ failed to provide specific and legitimate
3 reasons for rejecting Dr. Dao's opinion regarding plaintiff's mental limitations, as well as his
4 opinion that plaintiff's mental impairment had lasted or could be expected to last at least 12
5 months, and that plaintiff's mental impairment or treatment would cause her to miss three or
6 more days of work each month. Indeed, the ALJ did not discuss or reference Dr. Dao's August
7 11, 2006 Work Capacity Evaluation (Mental) in his decision, or explain the weight he gave to
8 Dr. Dao's opinions regarding plaintiff's mental impairments. Instead, the ALJ concluded that
9 plaintiff had not alleged or credibly established any mental impairment, and stated that he gave
10 great weight to the State Agency and consultative examiners, including Dr. Smith. (See AR at
11 48). In light of Dr. Dao's two-year treatment relationship with plaintiff (see AR at 46; see id. at
12 18-19)⁵, the ALJ should have discussed Dr. Dao's findings and provided specific and legitimate
13 reasons for discounting his opinions regarding plaintiff's mental impairments. Moreover, if the
14 ALJ needed to obtain more specific information regarding Dr. Dao's opinion, the ALJ should
15 have developed the record further. See Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996)
16 ("If the ALJ thought he needed to know the basis of [the treating physician's] opinions in order
17 to evaluate them, he had a duty to conduct an appropriate inquiry, for example, by subpoenaing
18 the physicians or submitting further questions to them."); Tonapetyan v. Halter, 242 F.3d 1144,
19 1150 (9th Cir. 1991) (ALJ has an independent duty to fully and fairly develop the record and
20 assure that the plaintiff's interests are considered); see also Mayes v. Massanari, 276 F.3d 453,
21 459 (9th Cir. 2001) (the ALJ's duty to develop the record exists even when the claimant is
22 represented by counsel).

23 In the Joint Stipulation, defendant argues that the ALJ properly rejected Dr. Dao's mental
24 work capacity evaluation. (Joint Stipulation at 9). Specifically, defendant asserts that the ALJ
25 noted that, on the same date the report was made, August 11, 2006, plaintiff visited Dr. Dao,
26 who listed plaintiff's chief complaint as "paperwork." (Joint Stipulation at 9-10 (citing AR at 48,

27
28 ⁵ At the October 26, 2007 hearing, plaintiff testified that started seeing Dr. Dao in 2005, and had last
seen him in February 2007. Plaintiff stated that she saw Dr. Dao every month. (See AR at 17-19).

1 250)). Defendant asserts that the ALJ found the assessment was not supported by any specific
2 clinical findings and, as the ALJ noted earlier in his decision, the limitations were inconsistent
3 with plaintiff's own activities, including driving her mother to and from work each day, operating
4 a motor vehicle, reading books and newspapers, attending church services and running
5 errands. (Joint Stipulation at 10 (citing AR at 48, 128, 131-32, 196, 198)). Defendant also
6 asserts that the ALJ compared Dr. Dao's opinion with the contrary findings of Dr. Smith, who
7 noted that plaintiff's inability to work was physical in nature but found no mental impairments
8 affecting plaintiff's ability to work. (Joint Stipulation at 10).

9 Defendant's assertions lack merit. The ALJ made no findings whatsoever regarding Dr.
10 Dao's August 11, 2006 Work Capacity Evaluation (Mental) form. Although it appears that
11 plaintiff saw Dr. Dao on the same day he completed the Work Capacity Evaluation (Mental),
12 and described plaintiff's "chief complaint" in his treatment notes as "paperwork" (AR at 250),
13 the ALJ did not refer to either Dr. Dao's mental evaluation form or his August 11, 2006
14 treatment notes in his decision. Rather, the ALJ referred to Dr. Dao's January 30, 2007
15 treatment notes, which described plaintiff's chief complaint as "Paperwork" (AR at 271), in the
16 context of rejecting a "Medical Report" completed by Dr. Dao on that day (AR at 272). (See AR
17 at 48). The Medical Report described plaintiff's "diagnosis and prognosis" as back pain, disc
18 bulge and severe pain, and indicated that the probable duration of her diagnosed condition was
19 permanent and plaintiff could perform "[n]o [w]ork." (AR at 272). The ALJ rejected Dr. Dao's
20 medical report, noting that it contained no date-specific medical findings or reference to specific
21 supporting medical records. (See AR at 48). Further, the ALJ found that the "Medical Opinion
22 Re: Ability to Do Work-Related Activities (Physical)," completed by Dr. Dao on August 11, 2006,
23 and not his mental evaluation form, was inconsistent with plaintiff's own admitted activities and
24 reported limitations; indeed, the activities defendant describes as being inconsistent with Dr.
25 Dao's mental evaluation form are primarily physical, not mental, in nature. (See AR at 48, 238-
26 40). Finally, the ALJ did not mention Dr. Dao's Work Capacity Evaluation (Mental) form, much
27 less conduct a comparison between Dr. Dao's opinion regarding plaintiff's mental limitations
28 and Dr. Smith's contrary findings. Any attempt to justify the ALJ's rejection of Dr. Dao's opinion

1 post hoc is not sufficient to cure the ALJ's error. See Vista Hill Found. v. Heckler, 767 F.2d
2 556, 559 (9th Cir. 1985) (a reviewing court may affirm an administrative decision only on
3 grounds articulated by the agency); Barbato v. Comm'r., 923 F. Supp. 1273, 1276 n.2 (C.D.
4 Cal. 1996) (a court may remand if the decision of the ALJ as to claimant's entitlement to
5 benefits on its face does not adequately explain how a conclusion was reached, even if Social
6 Security Administration can offer proper post hoc explanations for such unexplained
7 conclusions); see also Orn, 495 F.3d at 630 ("We review only the reasons provided by the ALJ
8 in the disability determination and may not affirm the ALJ on a ground upon which he did not
9 rely." (citing Connett, 340 F.3d at 874)).

10 In sum, the ALJ failed to meet his burden of setting forth a detailed and thorough
11 summary of the facts and conflicting evidence, stating his interpretation thereof, and making
12 findings regarding Dr. Dao's August 11, 2006 Work Capacity Evaluation (Mental) form. Thus,
13 the ALJ failed to set forth specific and legitimate reasons for rejecting Dr. Dao's form opinion.
14 See Reddick, 157 F.3d at 725; Cotton, 799 F.2d at 1408. While other evidence in the record
15 may well constitute substantial evidence supporting the ALJ's disability determination, the ALJ
16 must still provide specific and legitimate reasons for rejecting Dr. Dao's opinion regarding
17 plaintiff's mental limitations.

18 **C. The Hypothetical Question Posed to the Vocational Expert**

19 Plaintiff argues that the ALJ failed to incorporate all of plaintiff's limitations, including her
20 multiple mental limitations and Dr. Dao's opinion that plaintiff's mental limitations are likely to
21 cause her to miss more than three days of work each month, into the hypothetical questions
22 he presented to the vocational expert. (See Joint Stipulation at 23). Plaintiff further argues that
23 had the vocational expert been aware of these limitations, she may have determined that
24 plaintiff was completely unable to sustain employment in any labor market. (See Joint
25 Stipulation at 25). Defendant argues that the ALJ presented a complete hypothetical to the
26 vocational expert that included all of plaintiff's limitations that were based on substantial
27 evidence in the record. (See Joint Stipulation at 24-25).

28 As discussed above, the ALJ failed to properly consider Dr. Dao's opinions regarding

1 plaintiff's mental impairments. See supra Section B. In order for the vocational expert's
2 testimony to constitute substantial evidence, the ALJ must pose a hypothetical that is based
3 on medical assumptions supported by substantial evidence in the record that reflects each of
4 the claimant's limitations. Andrews v. Shalala, 53 F.3d 1035, 1044 (9th Cir. 1996); Roberts v.
5 Shalala, 66 F.3d 179, 184 (9th Cir. 1995). The hypothetical should be "accurate, detailed and
6 supported by the medical record." Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999). An
7 ALJ may properly omit an alleged impairment from a hypothetical if the omission of the
8 impairment is supported by substantial evidence in the record. See Osenbrock v. Apfel, 240
9 F.3d 1157, 1165 (9th Cir. 2001). The ALJ "is free to accept or reject restrictions in a
10 hypothetical question that are not supported by substantial evidence." Greger v. Barnhart, 464
11 F.3d 968, 973 (9th Cir. 2006) (citing Osenbrock, 240 F.3d at 1164-65)).

12 Because the ALJ failed to properly evaluate Dr. Dao's opinion regarding plaintiff's mental
13 limitations and his opinion that plaintiff likely would be absent from work more than three times
14 a month as a result of her impairments or treatment, the Court cannot determine whether the
15 omission of plaintiff's alleged mental limitations from the hypotheticals constituted error. See
16 Osenbrock, 240 F.3d at 1165. This is so, especially in light of the vocational expert's testimony
17 at the October 26, 2007 hearing that if plaintiff were "off task about ten percent of the time due
18 to her impairments," she "would not be able to maintain employment" and "would not be
19 working at a competitive rate." (AR at 32). Thus, on remand, the ALJ should pose a
20 hypothetical question that contains all relevant mental and physical limitations.

21 **D. Remand is Required to Remedy Defects in the ALJ's Decision**

22 The choice of whether to reverse and remand for further administrative proceedings, or
23 to reverse and simply award benefits, is within the discretion of the Court. McAlister v. Sullivan,
24 888 F.2d 599, 603 (9th Cir. 1989). Remand is appropriate where additional proceedings would
25 remedy defects in the ALJ's decision, and where the record should be developed more fully.
26 Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir. 1990).

27 Here, the Court finds remand appropriate. The ALJ failed to provide specific and
28 legitimate reasons to support his decision to reject the opinion of Dr. Dao regarding plaintiff's

