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

JERINA TRAISTER,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
Commissioner of the Social  
Security Administration,  
Defendant.

) No. EDCV 09-01082-SS  
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) **MEMORANDUM DECISION AND ORDER**  
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Plaintiff Jerina Traister ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying her application for Supplemental Security Income ("SSI") benefits. Alternatively, she asks for a remand. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. The parties filed a Joint Stipulation ("JS"), pursuant to this Court's Case Management Order, in support of their respective positions. For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED for further administrative proceedings.

**THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

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To qualify for disability benefits, a claimant must demonstrate a medically determinable physical or mental impairment that prevents him from engaging in substantial gainful activity<sup>1</sup> and that is expected to result in death or to last for a continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work he previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- (1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.
- (2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.
- (3) Does the claimant's impairment meet or equal one of list of specific impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is found

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<sup>1</sup> Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done for pay or profit. 20 C.F.R. §§ 404.1510, 416.910.

1 disabled. If not, proceed to step four.

2 (4) Is the claimant capable of performing his past work? If  
3 so, the claimant is found not disabled. If not, proceed  
4 to step five.

5 (5) Is the claimant able to do any other work? If not, the  
6 claimant is found disabled. If so, the claimant is found  
7 not disabled.

8  
9 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d  
10 949, 953-54 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1098-99); 20  
11 C.F.R. §§ 404.1520(b) - 404.1520(g)(1) & 416.920(b) - 416.920(g)(1).

12  
13 The claimant has the burden of proof at steps one through four, and  
14 the Commissioner has the burden of proof at step five. Bustamante, 262  
15 F.3d at 953-54 (citing Tackett, 180 F.3d at 1098). Additionally, the  
16 ALJ has an affirmative duty to assist the claimant in developing the  
17 record at every step of the inquiry. Id. at 954. If, at step four, the  
18 claimant meets his burden of establishing an inability to perform past  
19 work, the Commissioner must show that the claimant can perform some  
20 other work that exists in "significant numbers" in the national economy,  
21 taking into account the claimant's residual functional capacity ("RFC"),<sup>2</sup>  
22 age, education, and work experience. Tackett, 180 F.3d at 1098, 1100;  
23 Reddick, 157 F.3d at 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).  
24 The Commissioner may do so by the testimony of a vocational expert or by  
25 reference to the Medical-Vocational Guidelines appearing in 20 C.F.R.

26  
27 <sup>2</sup> Residual functional capacity is "what [one] can still do  
28 despite [his] limitations" and represents an "assessment based upon all  
of the relevant evidence." 20 C.F.R. §§ 404.1545(a), 416.945(a).

1 Part 404, Subpart P, Appendix 2 (commonly known as "the Grids").  
2 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001) (citing Tackett,  
3 180 F.3d at 1100-01). When a claimant has both exertional (strength-  
4 related) and nonexertional limitations, the Grids are inapplicable and  
5 the ALJ must take the testimony of a vocational expert. Moore v. Apfel,  
6 216 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d  
7 1335, 1340 (9th Cir. 1988)).

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9 **THE ALJ'S DECISION**

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The Administrative Law Judge ("ALJ") applied the five-step sequential evaluation process. At the first step of the evaluation process, the ALJ found that Plaintiff had not engaged in substantial gainful activity since her alleged onset date. (Administrative Record ("AR") 10). At step two, the ALJ found that Plaintiff's degenerative changes in the musculoskeletal system were severe, but that her alleged high blood pressure, heart palpitations, migraine headaches and mental disorder were either not medically determinable or not severe. (AR 11-13). At step three, the ALJ found that the impairment did not meet or equal any of the Listings. (AR 13). Concluding that Plaintiff's subjective symptoms were not credible, the ALJ found that Plaintiff was mentally and physically capable of performing medium work. (AR 15-16). At step four, the ALJ determined that Plaintiff was able to perform past relevant work. (AR 16). As such, the ALJ found that Plaintiff was not disabled within the meaning of the Social Security Act. (Id.).

1 **STANDARD OF REVIEW**

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3 Under 42 U.S.C. § 405(g), a district court may review the  
4 Commissioner’s decision to deny benefits. The court may set aside the  
5 Commissioner’s decision when the ALJ’s findings are based on legal error  
6 or are not supported by substantial evidence in the record as a whole.  
7 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing  
8 Tackett, 180 F.3d at 1097); Smolen v. Chater, 80 F.3d 1273, 1279 (9th  
9 Cir. 1996) (citing Fair v. Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).  
10

11 “Substantial evidence is more than a scintilla, but less than a  
12 preponderance.” Reddick, 157 F.3d at 720 (citing Jamerson v. Chater,  
13 112 F.3d 1064, 1066 (9th Cir. 1997)). It is “relevant evidence which a  
14 reasonable person might accept as adequate to support a conclusion.”  
15 Id. (citing Jamerson, 112 F.3d at 1066; Smolen, 80 F.3d at 1279). To  
16 determine whether substantial evidence supports a finding, the court  
17 must “‘consider the record as a whole, weighing both evidence that  
18 supports and evidence that detracts from the [Commissioner’s]  
19 conclusion.’” Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2  
20 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support  
21 either affirming or reversing that conclusion, the court may not  
22 substitute its judgment for that of the Commissioner. Reddick, 157 F.3d  
23 at 720-21 (citing Flaten v. Sec’y, 44 F.3d 1453, 1457 (9th Cir. 1995)).  
24

25 **DISCUSSION**

26  
27 Plaintiff contends that: (1) the ALJ erred by failing to provide  
28 specific and legitimate reasons for rejecting the treating

1 psychiatrist's opinion; (2) the ALJ erred by failing to provide germane  
2 reasons for rejecting lay witness testimony; and (3) the ALJ improperly  
3 assessed Plaintiff's ability to perform her past relevant work as a  
4 manager of a retail store. (Joint Stipulation ("JS") at 3). This Court  
5 agrees and remands this action on these grounds. As the Court  
6 determines that remand is required on these grounds alone, the Court  
7 need not address Plaintiff's alternative arguments.

8  
9 **A. The ALJ Failed To Provide Specific And Legitimate Reasons For**  
10 **Rejecting The Treating Physician's Opinion**  
11

12 Plaintiff contends that the ALJ failed to properly consider the  
13 opinion of Dr. Lyle Forehand, Jr. (JS at 3-4, 7-8). Specifically,  
14 Plaintiff argues that "[t]he ALJ erred in disregarding Dr. [Forehand's]  
15 opinion without providing specific and legitimate reasons, supported by  
16 substantial evidence."<sup>3</sup> (Id. at 4).

17  
18 The opinions of treating physicians are entitled to special weight  
19 because the treating physician is hired to cure and has a better  
20 opportunity to know and observe the claimant as an individual.  
21 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989). Where a  
22 treating physician's opinion is not contradicted by another doctor, it  
23 may be rejected only for "clear and convincing" reasons. Lester v.  
24 Chater, 81 F.3d 821, 830 (9th Cir. 1995). Even if the treating  
25 physician's opinion is contradicted by another doctor, the ALJ may not  
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27 <sup>3</sup> Plaintiff refers to Dr. Forehand as both Dr. Forehand and Dr.  
28 Lyle in the Joint Stipulation.

1 reject this opinion without providing specific and legitimate reasons,  
2 supported by substantial evidence in the record. Id.

3

4 Here, Plaintiff sought treatment at Bear Valley Family Counseling  
5 ("Bear Valley") from 2003-2005. (AR 227-97). Dr. Forehand, Plaintiff's  
6 treating psychiatrist at Bear Valley, diagnosed Plaintiff with, inter  
7 alia, depression, obsessive compulsive disorder and borderline  
8 personality disorder. (AR 244). As part of Plaintiff's treatment plan,  
9 Dr. Forehand prescribed medication, including Paxil and Lamictal. (See,  
10 e.g., AR 247). During this period, Plaintiff had routine visits with  
11 Dr. Forehand, as well as attended group therapy sessions at Bear Valley.  
12 (AR 227-97).

13

14 The ALJ impliedly rejected Dr. Forehand's diagnosis by relying, in  
15 whole, on the opinion of Dr. Linda Smith, the psychiatric consultative  
16 examiner. (AR 12). Although Dr. Smith's opinion contradicted Dr.  
17 Forehand's diagnosis, the ALJ failed to provide any reason for rejecting  
18 Dr. Forehand's opinion. (AR 244, 424-34). Indeed, the ALJ failed to  
19 even mention that Plaintiff sought treatment from Dr. Forehand and Bear  
20 Valley anywhere in the decision, much less provide specific and  
21 legitimate reasons to reject Dr. Forehand's opinion. (AR 8-16).  
22 Accordingly, the ALJ erred. Lingenfelter v. Astrue, 504 F.3d 1028,  
23 1037-38 n.10 (9th Cir. 2007) (stating that it was legal error for the  
24 ALJ to completely ignore the opinions of the treating physicians).

25

26 Remand for further proceedings is appropriate where additional  
27 proceedings could remedy defects in the Commissioner's decision. See  
28 Harman v. Apfel, 211 F.3d 1172, 1179 (9th Cir. 2000); Kail v. Heckler,

1 722 F.2d 1496, 1497 (9th Cir. 1984). Because the ALJ failed to provide  
2 specific and legitimate reasons for rejecting the treating physician's  
3 opinion or, instead, to fully credit the opinion, the case must be  
4 remanded to remedy this defect. Upon remand, the ALJ must either  
5 provide specific and legitimate reasons to reject Dr. Forehand's opinion  
6 or incorporate the limitations provided by Dr. Forehand into the RFC  
7 determination.

8

9 **B. The ALJ Failed To Provide Germane Reasons For Rejecting The**  
10 **Lay Witness' Testimony**

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12 Plaintiff contends that the ALJ failed to provide germane reasons  
13 for rejecting the testimony of a lay person. (JS 13). Plaintiff  
14 further contends that the ALJ's allegation of the lay witness'  
15 "financial motivation [was] unfounded." (Id.). Steve Beckman,  
16 Plaintiff's boyfriend, submitted a Third Party Function Report in  
17 support of Plaintiff's application.<sup>4</sup> (AR 125-32, 152-59). Mr. Beckman  
18 reported that he had known Plaintiff for five to six years and lived  
19 with her. (AR 125, 152). Mr. Beckman reported that Plaintiff  
20 experienced pain and numbness. (AR 125-30, 152-57). Mr. Beckman  
21 explained that Plaintiff's ability to perform activities such as cooking  
22 and cleaning depended on her pain level. (Id.).

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24 In determining whether a claimant is disabled, an ALJ must consider  
25 lay witness testimony concerning a claimant's ability to work. Stout v.

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27 <sup>4</sup> Mr. Beckman submitted two nearly identical Third Party Function  
28 Reports.



1 Comm'r, 454 F.3d 1050, 1053 (9th Cir. 2006); Smolen, 80 F.3d at 1288; 20  
2 C.F.R. §§ 404.1513(d)(4) & (e), and 416.913(d)(4) & (e). Lay witness  
3 testimony as to a claimant's symptoms cannot be disregarded without  
4 comment. Stout, 454 F.3d at 1053; see also Robbins v. Social Sec.  
5 Admin., 466 F.3d 880, 885 (9th Cir. 2006). The ALJ may discount the  
6 testimony of lay witnesses only if he gives "reasons that are germane to  
7 each witness." Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir. 2001)  
8 ("[L]ay testimony as to a claimant's symptoms is competent evidence that  
9 an ALJ must take into account, unless he or she expressly determines to  
10 disregard such testimony and gives reasons germane to each witness for  
11 doing so." (citations omitted)).

12  
13 The ALJ summarily rejected Mr. Beckman's testimony. He found that  
14 Mr. Beckman's opinion "establishe[d] no different conclusions" from the  
15 medical evidence and that Mr. Beckman had both the emotional and  
16 financial motivation to help Plaintiff obtain disability benefits in  
17 order "to relieve himself of total support of [Plaintiff] and transfer  
18 it to the public." (AR 12-13, 15). This Court notes that the ALJ  
19 cannot dismiss the testimony of Mr. Beckman, who is in a position  
20 analogous to a family member, on the basis of bias simply by virtue of  
21 his relationship with Plaintiff. Smolen, 80 F.3d at 1289 (finding that  
22 the ALJ erred when he rejected the testimonies of family members on bias  
23 grounds). Such rejection is equivalent to a wholesale dismissal of any  
24 family member or domestic partner as a credible witness. Id. To the  
25 contrary, witnesses who observe a claimant's symptoms on a daily basis  
26 are particularly valuable. Id. (citing Dodrill, 12 F.3d at 918-19).  
27 Although a relationship with the plaintiff can be one possible ground to  
28 question credibility, something more is required to show that a lay

1 witness's testimony is so tainted by bias that it must be rejected. As  
2 such, the ALJ erred by failing to provide sufficient reasons to reject  
3 lay witness testimony. Upon remand, if the ALJ wishes to reject Mr.  
4 Beckman's testimony, he must provide germane reasons supported by the  
5 evidence in the record.

6  
7 **C. Substantial Evidence Does Not Support The ALJ's Determination**  
8 **That Plaintiff Could Perform Her Past Relevant Work**  
9

10 After reviewing the medical evidence and Plaintiff's testimony, the  
11 ALJ concluded that Plaintiff was capable of performing medium work  
12 activity. (AR 16). The ALJ found that Plaintiff was therefore capable  
13 of returning to her past relevant work as a retail store manager. This  
14 was error.

15  
16 At step four of the sequential evaluation, claimants have the  
17 burden of showing that they can no longer perform their past relevant  
18 work. 20 C.F.R. § 404.1520(f). Although the burden of proof lies with  
19 the claimant at step four, the ALJ "still has a duty to make the  
20 requisite factual findings to support his decision." Pinto v.  
21 Massanari, 249 F.3d 840, 844 (9th Cir. 2001) (citing Social Security  
22 Ruling ("SSR") 82-62). The ALJ must look at the "residual functional  
23 capacity and the physical and mental demands" of the claimant's past.  
24 20 C.F.R. § 404.1520(f); SSR 82-62. The claimant must be able to  
25 perform the job as he actually performed it, or as it is generally  
26 performed in the national economy. SSR 82-61; Pinto, 249 F.3d at 845.

