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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL LAWRENCE THOMPSON,)	Case No. EDCV 16-0650-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	
v.)	REMAND
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	
_____)	

Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

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1 On May 28, 2014, Administrative Law Judge ("ALJ") James P. Nguyen
2 examined records, and heard testimony from Plaintiff and vocational
3 expert Alan L. Ey.¹ (AR 40-81). On August 7, 2014, the ALJ denied
4 Plaintiff benefits in a written decision, finding that Plaintiff
5 retained the capacity to perform certain sedentary work. (AR 21-35).
6 The Appeals Council denied review of the ALJ's decision. (AR 1-6).

7
8 Plaintiff provided the following testimony at the May 28, 2014
9 hearing: Plaintiff was thirty-two years old on February 15, 2011, the
10 alleged onset date of his disability. (AR 44, 182). On that date,
11 Plaintiff injured his back on a construction job, sustaining lumbar disc
12 herniations and radiculopathy. (Joint Stip. 3; AR 44, 182). Plaintiff
13 has attended physical therapy and seen personal physicians for pain
14 medication and spinal injections. (AR 49, 54-55). Plaintiff's
15 physicians have offered surgical treatment, but Plaintiff has declined
16 due to the potential complications involved. (AR 55).

17
18 Plaintiff, a married father of three young children, requires a
19 cane for ambulation and spends most of his time at home, sitting or
20 lying down. (AR 66-67, 70). He cannot stand or walk for more than "two
21 to five minutes" at a time. (AR 71-72). Plaintiff tends to not walk
22 more than the distance between his house and car. (AR 72). Plaintiff
23 cannot carry more than five pounds and does not carry weight except when

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¹ The reference to a hearing date of August 11, 2014 appears to be
a typographical error. (AR 42).

1 he occasionally carries light groceries. (AR 70). Plaintiff cooks two
2 to three times per week, but does not perform other chores or have other
3 household duties aside from occasionally driving his children around
4 when his wife is unable to do so. (AR 45, 47, 72).

5
6 Relevant portions of the medical record are summarized as follows:
7 In addition to his spinal impairments, Plaintiff has suffered from
8 depression and bipolar disorder. (Joint Stip. 4). On August 2, 2012,
9 Plaintiff presented to psychologist Heidi Gay Joffrion for evaluation of
10 depression, anger and substance dependence (AR 292-97). Plaintiff's
11 mental status examination revealed depressed mood, motor retardation,
12 and recently impaired judgment and impulsivity. (AR 295-96). Dr.
13 Joffrion diagnosed major depression, cannabis dependence, alcohol
14 intoxication and the need to rule out bipolar disorder, with a Global
15 Assessment of Functioning ("GAF") of 50, no higher than 55,² in the
16 preceding twelve months (AR 296).

17
18 At a September 13, 2012 follow-up examination, Dr. Joffrion
19 diagnosed depression and cannabis dependence with a GAF of 55,³ and
20 recommended individual counseling, weekly group therapy, a chemical
21 dependency program, and a medical referral for pain management. (AR
22

23
24 ² The GAF scale reflects a clinician's assessment of the
25 individual's overall level of functioning. See American Psychiatric
26 Association, Diagnostic & Statistical Manual of Mental Disorders 30 (4th
27 ed. 1994) ("DSM-IV"). A GAF between 41 and 50 is characterized by
28 serious symptoms such as suicidal ideation or any serious impairment in
social, occupational or school functioning. See DSM-IV at 32.

³ A GAF between 51 and 60 indicates moderate symptoms or moderate
difficulty in social, occupational or school functioning. See DSM-IV at
34.

1 301, 303). Plaintiff often did not avail himself of these options, as
2 evidenced by Dr. Joffrion's notation that Plaintiff was "noncompliant
3 much of the time." (AR 302).

4
5 On January 5, 2013, Plaintiff presented to the emergency room at
6 Fontana Medical Center with suicidal ideation and depression. (AR 390).
7 Examination showed Plaintiff to be tearful with superficial lacerations
8 to the left forearm. (AR 391-92). Emergency room staff consulted with
9 the psychiatry unit, whose subsequent mental examination revealed
10 impulsivity, reports of delusions, hallucinations and seeing "dark
11 shadows," and a history of self-harm. (AR 393, 395). Plaintiff was
12 discharged that same day with diagnoses of major depression and a GAF of
13 55, and given prescriptions for Effexor, Trazadone and Triptyline. (AR
14 392-93, 395).

15
16 On February 13, 2014, Plaintiff attempted suicide by overdosing on
17 Ibuprofen and Flexeril. (AR 408). After he was stabilized, Plaintiff
18 was admitted to the psychiatric department of Redlands Community
19 Hospital for further evaluation. (AR 408). Mental status examination
20 revealed a fair and appropriate mood and affect with recall of only two
21 of three items after a brief delay; fair attention span; poor digit
22 span; poor serial sevens; and impaired insight and judgment. (AR 411-
23 12). Plaintiff was diagnosed with bipolar disorder, most recent episode

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1 mixed; polysubstance abuse in remission; cannabis dependence; status
2 post-overdose; and a GAF of 20.⁴ (AR 412).

3
4 At a follow-up examination held the next day, Plaintiff's peer
5 interactions were remarkable for evidence of paranoia and guarded,
6 isolative and withdrawn behavior; panic attacks, agitation, delusions,
7 paranoia, racing thoughts, hopelessness, helplessness, worthlessness and
8 poor medication compliance. (AR 419). Plaintiff's affect and
9 expression were depressed, with a fair attention span, and he exhibited
10 impaired judgment, and low motivation and energy. (AR 419-20).
11 Plaintiff was discharged on February 15, 2014. (AR 421).

12
13 On March 14, 2014, psychiatrist Mirou Dom ("Dr. Dom") evaluated
14 Plaintiff. (AR 427). Dr. Dom prescribed a treatment plan of Seroquel
15 and lithium for management of mood lability, depression and psychosis;
16 Trazodone for acute insomnia; and psychotherapy. (AR 427).

17
18 At a follow-up examination held on April 11, 2014, Dr. Dom
19 increased Plaintiff's Seroquel dosage and continued him on lithium and
20 Trazodone. (AR 432). In a Summary Mental Assessment dated April 11,
21 2014 (the "SMA"), Dr. Dom diagnosed bipolar disorder, most recent
22 episode depressed with psychosis, chronic back pain and a GAF of 55.
23 (AR 429-31). The SMA also noted Plaintiff's two psychiatric
24 hospitalizations and Dr. Dom's clinical findings supporting his
25 diagnoses. (AR 429, 431). Dr. Dom found that Plaintiff would be

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28 ⁴ A GAF of 20 indicates "[s]ome danger of hurting self or others
(e.g. suicide attempts without clear expectation of death) . . . OR
gross impairment in communication." See DSM-IV at 34.

1 moderately-to-markedly limited (i.e., limited during one-third to two-
2 thirds of a workday) in myriad categories related to his ability to
3 work, including his abilities to carry out detailed instructions,
4 maintain attention and concentration for extended periods, make simple
5 work-related decisions, and complete a workday without interruptions
6 from psychological symptoms. (Joint Stip. 8; AR 430). Dr. Dom added
7 that Plaintiff would likely miss work more than three times per month
8 and that the assessed limitations would apply starting in 2011, when he
9 was diagnosed with bipolar disorder. (AR 431).

10
11 **The ALJ's Decision**
12

13 The ALJ applied the five-step process in evaluating Plaintiff's
14 case. (AR 23-35). At step one, the ALJ determined that Plaintiff had
15 not engaged in substantial gainful activity after the alleged onset
16 date. (AR 23). At step two, the ALJ found that Plaintiff's severe
17 impairments included multiple disc protrusions and spinal stenosis in
18 the lumbar spine, lumbar radiculopathy, hyperlipidemia, headaches,
19 obesity, bipolar disorder and major depressive disorder. (AR 23). At
20 step three, the ALJ found that Plaintiff's impairments did not meet or
21 equal a listing found in 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR
22 23-24).

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1 Before proceeding to step four, the ALJ found that Plaintiff had
2 the residual functional capacity ("RFC")⁵ to perform sedentary work with
3 the following further limitations:

4
5 [C]an occasionally climb ramps and stairs, but
6 never climb ladders, ropes, and scaffolds . . . can
7 occasionally balance, stoop, kneel, crouch, and
8 crawl . . . should avoid working around unprotected
9 heights . . . requires the use of a cane for
10 ambulation if moving away from the workstation . .
11 . can understand, remember, and carry out simple
12 job instructions . . . can maintain attention and
13 concentration to perform simple, routine, and
14 repetitive tasks . . . can have frequent
15 interaction with coworkers, supervisors, and the
16 general public . . . can work in an environment
17 with occasional changes to the work setting and
18 occasional work-related decision-making.

19 (AR 26).

20
21 In making the RFC finding, the ALJ rejected Dr. Dom's assessment of
22 Plaintiff. (AR 32). The ALJ primarily took issue with Dr. Dom's SMA,
23 finding that it was conclusory, "checklist-style," and unsupported by
24 objective evidence. (AR 32). Specifically, the ALJ wrote the
25 following:

26
27 The undersigned has read and considered the [SMA] .
28 . . This checklist-style form appears to have been
completed as an accommodation to [Plaintiff] and
includes only conclusions regarding functional
limitations without any rationale for those
conclusions. Dr. Dom indicated that for nearly
every domain [Plaintiff] has either moderate or
moderate-to-marked limitations . . . [Dr. Dom]
indicated that [Plaintiff] has a diagnosis of
bipolar disorder type I, the most recent episode of

⁵ A Residual Functional Capacity is what a claimant can still do despite existing exertional and non-exertional limitations. See 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 which was depressed with psychosis . . . However,
2 the findings and written statements of [Dr. Dom] on
3 the [SMA] are conclusory and do not indicate what
4 objective evidence underlies [his] opinions, and
5 appear to be based primarily on [Plaintiff's]
6 subjective complaints, which have been determined
7 to be not fully credible. The undersigned finds
8 this evidence has no probative value because there
9 is no objective evidence to support it.
10 Accordingly, this opinion is given no weight.

11 (AR 32).

12 Based on his findings, the ALJ determined that Plaintiff's
13 subjective complaints were "less than fully credible" and inconsistent
14 with objective medical evidence. (AR 33). The ALJ also pointed out
15 Plaintiff's history of non-compliance regarding recommended mental
16 health treatment. (AR 32). For example, the treatment records showed
17 that Plaintiff failed to comply with prescribed medications in late 2012
18 and in January 2013 before his first hospitalization. (AR 31). The
19 records also demonstrated that Plaintiff failed to show up for
20 outpatient psychiatric treatment on multiple occasions (AR 31, 393).
21 The ALJ noted a lack of psychiatric treatment from February 2013 to
22 Plaintiff's suicide attempt in February 2014, which occurred after
23 Plaintiff had failed to take his prescribed medications for the prior
24 three months (AR 31). Based on these findings, the ALJ concluded that
25 "[Plaintiff] has repeatedly declined to pursue the treatment
26 recommendations of his doctors, which demonstrates a possible
27 unwillingness to do what is necessary to improve his condition, or it
28 may also be an indication that his symptoms are not as severe as he
purports." (AR 31-32).

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1 The ALJ also referenced inconsistencies between Plaintiff's
2 testimony and his actions. For example, the ALJ noted that Plaintiff's
3 refusal to attend recommended individual and group therapy sessions,
4 alleging a lack of transportation, was inconsistent with his testimony
5 that he drove to pick up his prescriptions, take his children to school
6 and visit other family members. (AR 31).

7
8 The ALJ cited other inconsistencies surrounding Plaintiff's
9 allegations and treatment. The ALJ found that "[Plaintiff] has
10 described daily activities that are not limited to the extent one would
11 expect, given the complaints of disabling symptoms and limitations."
12 (AR 28). The ALJ gave the following specific examples:

13
14 Despite his impairments, [Plaintiff] has engaged in
15 a somewhat normal level of daily activity. For
16 example, [Plaintiff] testified that he is able to
17 cook simple meals, care for his three children at
18 least part of the time, and independently do some
19 grocery shopping and fill his prescriptions.
20 [Plaintiff] is able to drive his children to school
21 when needed. Some of the physical and mental
22 abilities and societal interactions required in
23 order to perform these activities are the same as
24 those necessary for obtaining and maintaining
25 employment. The [ALJ] finds [Plaintiff's] ability
26 to participate in such activities diminishes the
27 credibility of [his] allegations of functional
28 limitations.

(AR 28).

23 The ALJ noted the following additional inconsistencies in
24 Plaintiff's testimony:

25
26 [Plaintiff] testified at length about his
27 difficulties in handling money appropriately, yet
28 when asked whether he could manage his benefit
should he be awarded them [he] was confident that

1 he could so do. At times, [Plaintiff's] responses
2 while testifying were evasive or vague and left the
3 impression that [he] may have been less than
4 entirely candid, particularly when [he] was
5 testifying as to his share of responsibility for
6 childcare given his wife's work schedule, which
7 would require her to sleep during the day for a
8 portion of every week and leave [him] alone with
9 the children while she was at work.

10 (AR 28).

11 The ALJ also found that Plaintiff's consistent work history before
12 the alleged onset date of February 15, 2011, was incompatible with a
13 serious mental illness. (AR 31).

14 At steps four and five, the ALJ determined that Plaintiff was
15 unable to perform past relevant work but that he could seek work as a
16 Document Preparer, Order Clerk (Food and Beverage) or Final Assembler,
17 which were all jobs existing in significant numbers in the national
18 economy. (AR 33-34). Accordingly, the ALJ determined that Plaintiff
19 was not disabled within the meaning of the Social Security Act. (AR 34-
20 35).

21 STANDARD OF REVIEW

22 "An ALJ's disability determination should be upheld unless it
23 contains legal error or is not supported by substantial evidence."
24 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). "'Substantial
25 evidence' means more than a mere scintilla, but less than a
26 preponderance." Id. (quoting Lingenfelter v. Astrue, 504 F.3d 1028,
27 1035 (9th Cir. 2007)). Thus, the court may not substitute its judgment
28 for that of the ALJ "[i]f the evidence can support either affirming or

1 reversing the ALJ's conclusion." Robbins v. Soc. Sec. Admin., 466 F.3d
2 880, 882 (9th Cir. 2006). However, the court "must consider the entire
3 record as a whole and may not affirm simply by isolating a 'specific
4 quantum of supporting evidence.'" Id. (quoting Hammock v. Bowen, 879
5 F.2d 498, 501 (9th Cir. 1989)).

6 7 **PLAINTIFF'S CONTENTIONS**

8
9 Plaintiff claims that the ALJ erred by failing to provide clear and
10 convincing reasons for (1) rejecting Dr. Dom's assessment (Joint Stip.
11 6-13); and (2) finding Plaintiff's testimony and subjective complaints
12 not credible. (Joint Stip. 15-17).

13 14 **DISCUSSION**

15
16 After consideration of the record as a whole, the Court finds that
17 the ALJ did not materially err in finding Plaintiff's testimony
18 regarding his functional limitations not credible. However, Plaintiff's
19 first claim warrants remand for further consideration, as the Court
20 finds that the ALJ erred in rejecting the assessments of Plaintiff's
21 treating psychiatrist, Dr. Dom.

22 23 **A. The ALJ Properly Discounted Plaintiff's Credibility**

24
25 An ALJ's assessment of a claimant's credibility is entitled to
26 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.
27 1990) (citation omitted). "To determine whether a claimant's testimony
28 regarding subjective symptoms is credible, an ALJ must engage in a

1 two-step analysis. First, the ALJ must determine whether the claimant
2 has presented objective medical evidence of an underlying impairment
3 'which could reasonably be expected to produce the pain or other
4 symptoms alleged.'" Lingenfelter v. Astrue, 504 F.3d 1028, 1035-36 (9th
5 Cir. 2007). "Second, if the claimant meets this first test, and there
6 is no evidence of malingering, 'the ALJ can reject the claimant's
7 testimony about the severity of her symptoms only by offering specific,
8 clear and convincing reasons for doing so.'" Id. (citing Smolen v.
9 Chater, 80 F.3d 1273, 1282 (9th Cir.1996)). Because it is undisputed
10 that Plaintiff suffers from mental health issues which could reasonably
11 be expected to produce the symptoms alleged and there is no evidence of
12 malingering, the ALJ must have set forth specific, clear and convincing
13 reasons for rejecting Plaintiff's testimony.

14
15 An ALJ may consider a range of factors in assessing credibility,
16 including "(1) ordinary techniques of credibility evaluation, such as
17 the claimant's reputation for lying, prior inconsistent statements
18 concerning the symptoms, and other testimony by the claimant that
19 appears less than candid; (2) unexplained or inadequately explained
20 failure to seek treatment or to follow a prescribed course of treatment;
21 and (3) the claimant's daily activities." Smolen v. Chater, 80 F.3d
22 1273, 1284 (9th Cir. 1996).

23
24 Plaintiff contends that the ALJ set forth *only* the following two
25 rationales for discounting his credibility: one, that a consistent work
26 schedule prior to the alleged onset date was incompatible with a serious
27 mental illness; and two, non-compliance with recommended treatment.
28 (Joint Stip. 15-16). The Court disagrees. In addition to these two

1 grounds, the ALJ pointed to inconsistencies within Plaintiff's
2 testimony, as well as inconsistencies between Plaintiff's testimony and
3 his conduct and daily activities to support his adverse credibility
4 findings. (AR 28-31).

5
6 As set forth below, the Court finds that under the factors listed
7 in Smolen, the ALJ did not err in finding Plaintiff's testimony
8 regarding his complaints and limitations not credible.

9
10 1. Inconsistencies In Plaintiff's Testimony

11
12 The ALJ noted several inconsistencies within Plaintiff's testimony:
13 Plaintiff had difficulties in managing money (AR 16, 18-20), but
14 believed he could effectively manage any benefits received in this
15 matter. (AR 28, 33). Plaintiff claimed to have minimal childcare
16 duties, but his wife had a nocturnal work that required her to sleep
17 during the day, leaving Plaintiff alone with their three children while
18 she was at work. (AR 28). Additionally, Plaintiff alleged he could not
19 attend therapy because of a lack of transportation, but drove to pick up
20 prescriptions, take his children to school, and visit other family
21 members. (AR 31). Accordingly, the ALJ properly discredited
22 Plaintiff's testimony based on its internal inconsistency. See Thomas
23 v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) ("The ALJ may consider
24 . . . when weighing the [plaintiff's] credibility . . . inconsistencies
25 either in [his] testimony or between [his] testimony and [his]
26 conduct.")

27 //

28 //

1 2. Failure To Follow Prescribed Courses Of Treatment

2
3 An unexplained or inadequately explained failure to follow a
4 prescribed course of treatment is a basis for discounting a claimant's
5 credibility. Smolen, 80 F.3d at 1284; see also Molina v. Astrue, 674
6 F.3d 1104, 1112 (9th Cir. 2012) ("We have long held that, in assessing
7 a claimant's credibility, the ALJ may properly rely on 'unexplained or
8 inadequately explained failure to seek treatment or to follow a
9 prescribed course of treatment.'") (quoting Tommasetti v. Astrue, 533
10 F.3d 1035, 1039 (9th Cir. 2008). Stated differently, a plaintiff's
11 failure to assert a reason for not following a prescribed course of
12 treatment, "or a finding by the ALJ that the proffered reason is not
13 believable, can cast doubt on the sincerity of the [plaintiff's
14 testimony]." Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989).

15
16 Here, it is undisputed that Plaintiff failed to follow numerous
17 prescribed courses of treatment (Joint Stip. 16). However, Plaintiff
18 did not provide any excuses for such failure other than forgetfulness,
19 feeling that he did not need to follow them, or an inability to pursue
20 them due to lack of transportation as noted above (AR 69, 427).⁶ The
21 Court finds that the ALJ properly relied on Plaintiff's failure to
22 follow prescribed courses of treatment to discount Plaintiff's
23 credibility.

24
25
26 ⁶ Plaintiff's contention that his failure to follow prescribed
27 treatment is indicative of his disability is inappropriate for
28 consideration at this juncture, as this contention was not before the
ALJ. See Meanel v. Apfel, 172 F.3d 1111, 1115 (9th Cir. 1999)
(plaintiffs must raise issues at administrative hearing to preserve them
on appeal).

1 3. Activities of Daily Living

2
3 An ALJ may properly rely on inconsistencies between a claimant's
4 testimony and her conduct and daily activities. See Burch v. Barnhart,
5 400 F.3d 676, 680-81 (9th Cir. 2005) (daily activities such as caring
6 for personal needs, cooking, cleaning and shopping can constitute "clear
7 and convincing reasons" for discounting a claimant's testimony). Here,
8 the ALJ cited Plaintiff's testimony that despite his impairments, he was
9 able to cook, care for his three children at least part of the time, and
10 independently do some grocery shopping and fill his prescription. (AR
11 28). The ALJ also noted that Plaintiff drove his children to school
12 when needed. (AR 28). Thus, the ALJ's finding that Plaintiff's ability
13 to participate in such activities was inconsistent with his allegations
14 of disability was a clear and convincing reason to discount his
15 credibility.

16
17 4. Plaintiff's Pre-Onset Work History

18
19 An ALJ may rely on poor work history prior to the alleged onset
20 date to discount a claimant's credibility. See Thomas v. Barnhart, 278
21 F.3d 947, 959 (9th Cir. 2002). The ALJ attempted to apply this
22 principle to the present case. However, there is no evidence that
23 Plaintiff had a poor work history before the onset date. In fact, the
24 opposite appears to be true. The ALJ found that Plaintiff had a
25 consistent work history before the January 2011 onset date and that this
26 was "incompatible" with a serious mental illness. (AR 31). Unable to
27 locate any precedent for the ALJ's particular reasoning, the Court finds
28 that the ALJ erred in relying on Plaintiff's positive work history prior

1 to the onset date to discount his credibility. However, this error is
2 harmless, as the ALJ provided other specific, clear and convincing
3 reasons in finding Plaintiff's testimony not credible as discussed
4 above. See Stout v. Comm'r of Soc. Sec. Admin., 454 F.3d 1050, 1055
5 (9th Cir. 2006) (finding error to be harmless when it was
6 inconsequential to the ultimate nondisability determination).

7
8 The legally valid reasons given by the ALJ for discounting
9 Plaintiff's credibility sufficiently allow the Court to conclude that
10 the ALJ's credibility finding was based on permissible grounds. The
11 Court therefore defers to the ALJ's credibility determination. See
12 Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court will
13 defer to ALJ's credibility determination when the proper process is used
14 and proper reasons for the decision are provided); accord Flaten v.
15 Sec'y of Health and Human Serv., 44 F.3d 1453, 1464 (9th Cir. 1995).
16 Where the ALJ has made specific findings justifying a decision to
17 disbelieve a plaintiff's symptom allegations and those findings are
18 supported by substantial evidence in the record, "[the court] may not
19 engage in second guessing." Thomas v. Barnhart, 278 F.3d 947, 958-59
20 (9th Cir. 2002).

21
22 **B. The ALJ Failed To Provide Clear And Convincing Reasons For**
23 **Rejecting The Mental Function Assessments Of Plaintiff's Treating**
24 **Psychiatrist**

25
26 An ALJ may reject the uncontradicted opinion of a treating
27 physician only for "clear and convincing reasons that are supported by
28 substantial evidence." Ghanim v. Colvin, 763 F.3d 1154, 1160-61 (9th

1 Cir. 2014) (quoting Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir.
2 2005)). Here, Dr. Dom's assessment is uncontroverted, as he is the only
3 physician of record to have both examined Plaintiff and evaluated the
4 functional impact of his bipolar disorder and depression. Thus, the
5 "clear and convincing" standard is applicable.

6
7 An ALJ may reject "check-off" physician's reports that do not
8 contain any explanation of the bases of the physician's conclusions or
9 are not supported by objective evidence. Molina, 674 F.3d at 1111 (9th
10 Cir. 2012) (citing Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996);
11 see also Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 n.3
12 (9th Cir. 2004). However, such reports, when they are accompanied by
13 comments explaining the reasons for the physician's responses or
14 supported by objective evidence, should not be rejected. Smolen, 80
15 F.3d at 1288 (9th Cir. 1996) ("Moreover, the questions called not only
16 for yes-or-no answers, but also for comments from the physicians in
17 support of their answers. Dr. Smolen's responses were accompanied by
18 comments explaining the reasons for each of his responses. Those
19 comments . . . appear to be based on Dr. Smolen's knowledge of [the
20 plaintiff's] medical history and his experience in his specialty.").

21
22 The ALJ found the SMA to be a conclusory, checklist-style form that
23 did not reference supporting objective evidence. (AR 32). However, the
24 SMA references Plaintiff's years- long history of treatment for bipolar
25 disorder and depression, specifically refers to Plaintiff's prior
26 bipolar diagnosis and psychiatric hospitalizations in 2012 and 2013, and
27 contains handwritten notations detailing Dr. Dom's clinical findings,
28 signs and symptoms supporting his diagnoses based upon mental status

1 examinations and psychological testing. (AR 429-431). Contrary to the
2 ALJ's findings, Dr. Dom's assessment referenced Plaintiff's medical
3 history, test results and objective observations. Dr. Dom, who
4 evaluated Plaintiff twice before issuing the SMA, listed the following
5 observations: dysphoric, irritable and manic mood, difficulty
6 concentrating and focusing, and exhibiting signs of paranoia. (AR 431).

7
8 Accordingly, the ALJ failed to provide clear and convincing reasons
9 supported by substantial evidence for rejecting Dr. Dom's uncontradicted
10 assessment of Plaintiff.

11
12 **C. Remand Is Warranted**

13
14 The decision whether to remand or order an immediate award of
15 benefits is within the district court's discretion. Harman v. Apfel,
16 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no useful purpose would
17 be served by further administrative proceedings, or where the record is
18 fully developed, it is appropriate to direct an immediate award of
19 benefits. Id. at 1179 ("[T]he decision of whether to remand for further
20 proceedings turns upon the likely utility of such proceedings.").
21 However, where the circumstances of the case suggest that further
22 administrative review could remedy the Commissioner's errors, remand is
23 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);
24 Harman, 211 F.3d at 1179-81.

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1 Here, the Court has determined that the ALJ erred by not providing
2 legally sufficient reasons for rejecting the uncontroverted opinion of
3 Dr. Dom, Plaintiff's treating psychiatrist. On remand, the ALJ must set
4 forth specific, and clear and convincing reasons for rejecting Dr. Dom's
5 assessment (e.g., citing to a legally sufficient opinion from a
6 consultative or non-treating psychiatrist). Because outstanding issues
7 must be resolved before a determination of disability can be made, and
8 it is not clear from the record that the ALJ would be required to find
9 Plaintiff disabled if the discredited evidence were credited as true,
10 the Court finds this to be an instance where further administrative
11 proceedings would serve a useful purpose. Remand is therefore
12 appropriate.

13
14 **ORDER**

15
16 For the foregoing reasons, the decision of the Administrative Law
17 Judge is VACATED, and the matter is REMANDED, without benefits, for
18 further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

19
20 LET JUDGMENT BE ENTERED ACCORDINGLY

21
22
23 DATED: January 18, 2017.

24
25 _____
26 /s/
27 ALKA SAGAR
28 UNITED STATES MAGISTRATE JUDGE