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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATTY LYNN MARTIN,)	Case No.: 1:16-cv-01676 - JLT
Plaintiff,)	ORDER REMANDING THE ACTION PURSUANT
v.)	TO SENTENCE FOUR OF 42 U.S.C. § 405(g)
NANCY A. BERRYHILL ¹ ,)	ORDER DIRECTING ENTRY OF JUDGMENT IN
Acting Commissioner of Social Security,)	FAVOR OF PLAINTIFF PATTY MARTIN AND
Defendant.)	AGAINST DEFENDANT NANCY A. BERRYHILL,
)	ACTING COMMISSIONER OF SOCIAL
)	SECURITY

Patty Lynn Martin asserts she is entitled to benefits under Titles II and XVI of the Social Security Act. Plaintiff argues the administrative law judge erred in evaluating the record and seeks judicial review of the decision to deny her application for benefits. Because the ALJ failed to apply the proper legal standards in evaluating the record, the decision is **REMANDED** for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

PROCEDURAL HISTORY

In June and July 2013, Plaintiff filed applications for a period of disability, disability insurance benefits, and supplemental security income. (Doc. 10-3 at 15) In both applications, Plaintiff alleged disability beginning August 26, 2011. (*Id.*) After the Social Security Administration denied the

¹ Nancy A. Berryhill is now Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substitutes Nancy A. Berryhill for her predecessor, Carolyn W. Colvin, as the defendant in this suit.

1 applications, Plaintiff requested a hearing, which was held on March 3, 2015. (*See generally* Doc. 10-
2 4; Doc. 10-3 at 15) The ALJ determined Plaintiff was not disabled and issued an order denying
3 benefits on March 20, 2015. (*Id.* at 15-24) When the Appeals Council denied Plaintiff’s request for
4 review on September 7, 2016 (*id.* at 2-4), the ALJ’s findings became the final decision of the
5 Commissioner of Social Security (“Commissioner”).

6 STANDARD OF REVIEW

7 District courts have a limited scope of judicial review for disability claims after a decision by
8 the Commissioner to deny benefits under the Social Security Act. When reviewing findings of fact,
9 such as whether a claimant was disabled, the Court must determine whether the Commissioner’s
10 decision is supported by substantial evidence or is based on legal error. 42 U.S.C. § 405(g). The
11 ALJ’s determination that the claimant is not disabled must be upheld by the Court if the proper legal
12 standards were applied and the findings are supported by substantial evidence. *See Sanchez v. Sec’y of*
13 *Health & Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987).

14 Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a
15 reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.
16 389, 401 (1971) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197 (1938)). The record as a whole
17 must be considered, because “[t]he court must consider both evidence that supports and evidence that
18 detracts from the ALJ’s conclusion.” *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985).

19 DISABILITY BENEFITS

20 To qualify for benefits under the Social Security Act, Plaintiff must establish he is unable to
21 engage in substantial gainful activity due to a medically determinable physical or mental impairment
22 that has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. §
23 1382c(a)(3)(A). An individual shall be considered to have a disability only if:

24 his physical or mental impairment or impairments are of such severity that he is not
25 only unable to do his previous work, but cannot, considering his age, education, and
26 work experience, engage in any other kind of substantial gainful work which exists in
27 the national economy, regardless of whether such work exists in the immediate area
28 in which he lives, or whether a specific job vacancy exists for him, or whether he
would be hired if he applied for work.

42 U.S.C. § 1382c(a)(3)(B). The burden of proof is on a claimant to establish disability. *Terry v.*

1 *Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990). If a claimant establishes a prima facie case of disability,
2 the burden shifts to the Commissioner to prove the claimant is able to engage in other substantial
3 gainful employment. *Maounois v. Heckler*, 738 F.2d 1032, 1034 (9th Cir. 1984).

4 ADMINISTRATIVE DETERMINATION

5 To achieve uniform decisions, the Commissioner established a sequential five-step process for
6 evaluating a claimant’s alleged disability. 20 C.F.R. §§ 404.1520, 416.920(a)-(f). The process requires
7 the ALJ to determine whether Plaintiff (1) engaged in substantial gainful activity during the period of
8 alleged disability, (2) had medically determinable severe impairments (3) that met or equaled one of the
9 listed impairments set forth in 20 C.F.R. § 404, Subpart P, Appendix 1; and whether Plaintiff (4) had
10 the residual functional capacity (“RFC”) to perform to past relevant work or (5) the ability to perform
11 other work existing in significant numbers at the state and national level. *Id.* The ALJ must consider
12 testimonial and objective medical evidence. 20 C.F.R. §§ 404.1527, 416.927.

13 **A. Medical Background and Opinions**

14 In December 2012, Plaintiff had an assessment at the Kern County Mental Health Department.
15 (Doc. 10-9 at 71) She described a family history of mental illness and believed she was molested by
16 her father, although she could not remember it. (*Id.*) In addition, Plaintiff said she “was raped 3 years
17 ago and never reported it to anyone.” (*Id.*) Plaintiff reported “self medicating with alcohol” but said
18 she had been sober for one month and was attending AA meetings. (*Id.*) Christine Carlyon, ASW,
19 believed Plaintiff’s thought process was goal-oriented, and she had good insight and judgment. (*Id.* at
20 78) Plaintiff appeared inattentive and exhibited an impaired ability to concentrate. (*Id.*) Ms. Carlyon
21 opined Plaintiff had a major depressive disorder and post-traumatic stress disorder. (*Id.* at 79, 81)

22 In January 2013, Plaintiff complained of high anxiety, racing thoughts, poor sleep, cold-sweats,
23 and flashbacks to being raped. (Doc. 10-10 at 47) Connery Lee, NP and RN, observed that Plaintiff
24 appeared anxious and depressed, and gave Plaintiff a GAF score of 45.² (*Id.* at 49, 53) Plaintiff
25 received anti-depression and anti-anxiety medication, and Mr. Lee told Plaintiff to return for a follow-

27 ² GAF scores range from 1-100, and in calculating a GAF score, the doctor considers “psychological, social, and
28 occupational functioning on a hypothetical continuum of mental health-illness.” American Psychiatric Association,
Diagnostic and Statistical Manual of Mental Disorders, 34 (4th ed.) (“DSM-IV). A GAF score between 41-50 indicates
“[s]erious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairments
in social, occupational, or school functioning (e.g., no friends, unable to keep a job).” *Id.* at 34.

1 up appointment within two months. (*Id.* at 54)

2 On March 20, 2013, Plaintiff was admitted to a hospital on a hold pursuant to California's
3 Welfare and Institutions Code section 5150 as a danger to herself. (Doc. 10-9 at 28) She reported that
4 she "was staying in a motel room alone where she was drinking alcohol," and after Plaintiff talked to
5 her brother, he "called the police to go find her." (*Id.*) She stated she did not intend to kill herself but
6 admitted "using alcohol to help her forget about her PTSD." (*Id.*) Plaintiff was diagnosed with
7 Bipolar disorder, type I, and received medication at the hospital. (*Id.* at 29) She was discharged on
8 March 26, when she showed "no evidence of suicidality, homicidality, mania or psychosis." (*Id.* at
9 31)

10 Plaintiff visited KCMHD on April 1, 2013, "seeking services following [her] hospitalization."
11 (Doc. 10-10 at 40) Plaintiff described "feeling hopeless and helpless, experiencing a loss of appetite
12 which result[ed] in weight loss, difficulty [with] focusing and concentration and indecisiveness." (*Id.*)
13 In addition, "[s]he reported severe anxiety, hyper-vigilance and exaggerated responses to perceived
14 threats." (*Id.*) Stacy Lynn Kuwahara, MFT Intern, determined Plaintiff would "receive up to 12
15 encounters that may include medication support and individual/family counseling," and participate in
16 group therapy. (*Id.* at 46)

17 On May 30, 2013, Dr. Rossano Bangasan gave Plaintiff a "progress evaluation." (Doc. 10-10 at
18 21) He noted Plaintiff was taking Lithium Carbonate, and while her Lithium level was "within it's (sic)
19 accepted range," Plaintiff said she "still [felt] different, kind of anxious, depressed." (*Id.*) According to
20 Dr. Bangasan, Plaintiff also stated she was "not experiencing any form of perceptual disturbances of
21 late," such as suicidal or homicidal ideations. (*Id.*) Dr. Bangasan opined Plaintiff appeared anxious,
22 depressed, and frustrated. (*Id.* at 22-23) Dr. Bangasan concluded Plaintiff had a "moderate" disability
23 and was able to work part-time with support. (*Id.* at 26)

24 Treatment notes from June 2013 indicate Plaintiff reported her sleep was "unchanged," but she
25 did not have "any form of perceptual disturbances." (Doc. 10-10 at 15) Dr. Bangasan noted Plaintiff
26 was celebrating "100 days of being clean and sober from any alcohol use." (*Id.* at 16) He observed
27 that Plaintiff appeared frustrated, anxious, and euthymic, but also believed Plaintiff "look[ed] much
28 better mood wise." (*Id.* at 16-17) Plaintiff's thought process was goal-oriented, coherent, and logical.

1 (*Id.* at 17) Dr. Bangasan believed Plaintiff had a “[f]air response to psychopharmacotherapy,” and
2 Plaintiff was amenable to getting 3rd party assistance if she [felt]... in crisis or near [a] nervous
3 breakdown episode.” (*Id.* at 19) Dr. Bangasan again opined Plaintiff had a “moderate” disability and
4 was able to perform part-time work with support. (*Id.* at 20)

5 In August 2013, Dr. Bangasan noted Plaintiff reported she was “getting easily irritated [with]
6 things, and she couldn’t understand the reason why.” (Doc. 10-10 at 65) In addition, she said she was
7 “sensing some tremors in her hands.” (*Id.*) Dr. Bangasan noted Plaintiff appeared frustrated, euthymic,
8 and anxious. (*Id.* at 67) They discussed “the possibility that [Plaintiff] being anxious could be related
9 to her ongoing PTSD,” and Plaintiff agreed to begin taking Zoloft. (*Id.* at 65) Dr. Bangasan concluded
10 Plaintiff’s current disability level was “moderate.” (*Id.* at 70)

11 Dr. Bangasan also saw Plaintiff for progress evaluations in October and December 2013. (*See*
12 Doc. 10-10 at 72-85) In December, Plaintiff “denied having ... tremors or shakes anymore.” (*Id.* at
13 78) Dr. Bangasan noted Plaintiff again reported she was experiencing more irritability, but realized it
14 “came from... some stressful things and situations.” (*Id.*) Plaintiff said she did not know where she
15 would go once her treatment plan with KCMHP ended, and she feared her psychotropic medications
16 may be changed. (*Id.*) Dr. Bangasan opined Plaintiff had good insight and judgment, intact attention,
17 and fair memory. (*Id.* at 80) On December 12, Dr. Bangasan again indicated Plaintiff had a moderate
18 disability and was able to work part-time with support. (*Id.* at 84)

19 In January 2014, Plaintiff visited KCMHD and reported she was taking her medication as
20 prescribed, and she did not have any side effects. (Doc. 10-11 at 58) Dr. Sandy Abdelkedous noted
21 Plaintiff’s speech was normal; she had good eye contact; and her thought process was goal-oriented,
22 coherent, and logical. (*Id.* at 59) Further, Plaintiff’s attention and concentration was intact, with good
23 insight and judgment. (*Id.* at 60) Similar findings were made through March 2014, when Plaintiff was
24 advised to reduce the amount of Lithium she was taking because her “levels were elevated.” (*See id.* at
25 34, 43-44, 35-36) In addition, each month, the notes indicated Plaintiff had a moderate disability, with
26 which she could perform part-time work with support. (*Id.* at 40, 48, 64)

27 Dr. Preston Davis reviewed the medical record and completed a mental residual functional
28 capacity assessment on March 25, 2014. (Doc. 10-4 at 52-54) Dr. Davis opined Plaintiff had mental

1 limitations, and was “moderately limited” with the ability to understand and remember very short,
2 simple instructions; but was not significantly limited with the ability to carry out these instructions. (*Id.*
3 at 52-53) He opined Plaintiff was “[u]nable to remember/understand moderate[] to highly complex/
4 detailed instructions.” (*Id.* at 53) According to Dr. Davis, Plaintiff was “[a]ble to maintain attention
5 for two hours at a time and persist and simple tasks over eight- and forty- hour periods with normal
6 supervision” but her “symptoms would preclude persistence at more complex tasks over time.” (*Id.*)

7 In May 2014, Plaintiff reported that though her tremors had “decreased, they [were] not
8 completely gone.” (Doc. 10-11 at 26) Dr. Abdelkedous noted Plaintiff had “visible tremors on
9 outstretched [upper extremities] bilaterally.” (*Id.*) She observed that Plaintiff had a euthymic mood,
10 spoke normally, made good eye contact, and her affect was appropriate. (*Id.* at 27) The following
11 month, Plaintiff reported she continued to have tremors despite a lower dose of Lithium. (*Id.* at 18) In
12 addition, she complained of “mood instability and lability.” (*Id.*) As a result, her Lithium prescription
13 was again increased. (*Id.* at 10)

14 In July 2014, Plaintiff reported a “much improved mood” after changing the Lithium dose and
15 staggering them throughout the day. (Doc. 10-11 at 10) Although Plaintiff received propranolol to help
16 with the tremors, she reported that she “stopped taking it after the second dose because she did not feel
17 well on it” and it made her lightheaded. (*Id.*) Dr. Abdelkedous noted Plaintiff behaved cooperatively;
18 and her thought process was goal-oriented, coherent, and logical. (*Id.* at 11-12) Dr. Abdelkedous
19 believed Plaintiff’s diagnosis was unchanged and that Plaintiff was able to work part time with support.
20 (*Id.* at 16) Dr. Bangasan approved of this assessment. (*Id.*)

21 In August 2014, Dr. Abdelkedous found Plaintiff had an appropriate affect, cooperative
22 behavior, and euthymic mood. (Doc. 10-11 at 3) Dr. Abdelkedous continued Plaintiff on her current
23 levels of medication. (*Id.* at 8)

24 Plaintiff had a progress evaluation on November 14, 2014. (Doc. 10-14 at 49) Plaintiff
25 reported she was “having worsening anxiety with nightmares,” which caused her to wake up
26 screaming. (*Id.*) In addition, she continued to have tremors. (*Id.*) Dr. Eugene Kim observed that
27 Plaintiff appeared anxious with an appropriate affect. (*Id.* at 49-50) He added Prazosin to Plaintiff’s
28 medication regimen of Lithium, Seroquel and Zoloft. (*Id.* at 54) Dr. Kim opined Plaintiff’s disability

1 was “moderate” and her prognosis was “fair,” and Plaintiff was directed to return in four to six weeks.
2 (*Id.*) Dr. Ranjit Padhy approved this assessment. (*Id.*)

3 On February 5, 2015, Plaintiff told Dr. Japsharan Gill that her short-temperedness and shaking
4 decreased following a decrease in Lithium. (Doc. 10-14 at 42) However, Dr. Gill noted Plaintiff
5 described low energy, depression, increased anxiety, “racing of mind, [and] doing more OCD things
6 like counting.” (*Id.*) Further, Plaintiff reported she continued to have nightmares. (*Id.*) Dr. Gill
7 opined that Plaintiff appeared frustrated, anxious, depressed, and irritable. (*Id.* at 43) Further, Dr. Gill
8 believed she was “minimally worse,” but her disability remained “moderate.” (*Id.* at 46-47) Dr. Gill
9 added Lamictal and Wellbutrin to Plaintiff’s psychotropic medications. (*Id.* at 47) Plaintiff was
10 directed to return to KCMHD in two weeks. (*Id.* at 47)

11 Two weeks later, on February 19, Plaintiff told Dr. Gill that “her nightmares [had] decreased to
12 once or twice since she started taking Xanax pm for nightmares.” (Doc. 10-14 at 35) In addition,
13 Plaintiff reported “her mood [was] better, she [had] noticed decreased anger outburst and [her] energy
14 level [was] improving as well.” (*Id.*) However, Dr. Gill noted that Plaintiff appeared anxious and
15 frustrated, and opined Plaintiff had “minimally improved.” (*Id.* at 36, 39) Dr. Gill increased Plaintiff’s
16 prescriptions for Lamictal and Wellbutrin. (*Id.* at 40) According to Dr. Gill, Plaintiff’s prognosis was
17 “guarded,” she was directed to return for a follow-up in “2 weeks or sooner if needed.” (*Id.*) In
18 addition, Dr. Gill noted Plaintiff’s disability was “severe,” and she could not perform work. (*Id.*) This
19 assessment was approved by Dr. Gabriela Obrocea. (*Id.*)

20 Dr. Bangasan completed a “Medical Source Statement” on February 19, 2015. (Doc. 10-14 at
21 28) The statement indicated Dr. Bangasan was a “new physician” as of January 2015, but Plaintiff had
22 been seen at the clinic since April 9, 2013. (*Id.* at 33) Dr. Bangasan noted Plaintiff had been diagnosed
23 with Bipolar I disorder, and her “most recent episode [was] mixed with psychotic features.” (*Id.* at 28)
24 Dr. Bangasan indicated Plaintiff’s “chronic and persistent mental illness...characterized by mood
25 swings, depression, anxiety, and thoughtlessness,” as well as emotional lability, psychomotor agitation,
26 impaired impulse control, decreased energy, memory impairment, and sleep disturbance. (*Id.* at 29)
27 According to Dr. Bangasan, Plaintiff had a seriously limited ability to maintain attention for two-hour
28 segments and was “unable to meet competitive standards” with remembering work-like procedures and

1 short, simple instructions. (*Id.* at 30) Further, Dr. Bangasan opined Plaintiff had “no useful ability to
2 function” with other work-related functions such as performing at a consistent pace, responding to
3 changes, getting along with coworkers, and dealing with work stress. (*Id.* at 30-31) Dr. Bangasan
4 noted Plaintiff had “been experiencing mood swings, depression and anxiety,” and opined “her
5 thoughtless behavior may impair her ability to interact with peers in social situations.” (*Id.* at 31) He
6 concluded Plaintiff was likely to be absent from work more than four days per month. (*Id.* at 32)

7 **B. Administrative Hearing Testimony**

8 Plaintiff testified at a hearing before the ALJ on March 3, 2015. (Doc. 10-3 at 33) She reported
9 that she had worked as an EMT, but stopped working in August 2011 after suffering a back injury at
10 work. (*Id.* at 40) She said her back issue was resolved, but she believed she remained unable to work
11 due to mental limitations. (*See id.* at 37)

12 She reported that she had anxiety and depression and that she was unable to concentrate. (Doc.
13 10-3 at 39, 41) In addition, she said she had nightmares and would “get paranoid and then ... feel
14 psychotic.” (*Id.* at 47) Plaintiff stated sometimes she did not “want to see anybody” and she felt
15 “anxious every day.” (*Id.* at 48-49) According to Plaintiff, her symptoms had been that way “[f]or a
16 long time,” though “not as much” while she was still working. (*Id.* at 47) She believed her symptoms
17 were “as serious as they [were]” on March 21, 2013—the date she was admitted to a hospital and quit
18 drinking. (*Id.*)

19 Plaintiff stated she was placed on “a different [medication] regimen many times” and Drs. Gail
20 and Bangason were “trying to find the right medicine.” (Doc. 10-3 at 41-42) She testified she saw Dr.
21 Bangason “about three times” both for medicine management and to talk about how she was doing.
22 (*Id.* at 44) Further, Plaintiff said she went to “talk therapy” every two or four weeks, for “30 to 45
23 minutes” at each time. (*Id.* at 42)

24 Plaintiff reported her medication had recently changed, and at the time of the hearing she was
25 taking Lithium, Xanax, Seroquel, Synthroid, and Zoloft. (Doc. 10-2 at 45-46) She said this medication
26 caused “the shakes,” and she took Zantac because her stomach was “always sick. (*Id.* at 46, 47)

27 **C. The ALJ’s Findings**

28 Pursuant to the five-step process, the ALJ determined Plaintiff did not engage in substantial

1 gainful activity after the alleged onset date of August 26, 2011. (Doc. 10-3 at 17) At step two, the ALJ
2 found Plaintiff's severe impairments included: "major depressive disorder and posttraumatic stress
3 disorder." (*Id.*) At step three, the ALJ determined Plaintiff did not have an impairment, or
4 combination of impairments, that met or medically equaled a Listing. (*Id.* at 18) Next, the ALJ
5 determined:

6 [T]he claimant has the residual functional capacity to perform a full range of work at all
7 exertional levels but with the following nonexertional limitations: She is capable of tasks
8 that can be learned in less than 30 days involving no more than simple, short instructions
9 and simple work-related decisions with few work place changes. She requires work
[with] no exposure to hazardous conditions secondary to symptoms and medications;
and she is capable of occasional interaction with supervisors, incidental interaction with
coworkers and no interaction with [the] public.

10 (*Id.* at 18-19) Based upon this RFC, the ALJ concluded Plaintiff was "unable to perform any past
11 relevant work." (*Id.* at 22) However, the ALJ also found "there are jobs that exist in significant
12 numbers in the national economy that the claimant can perform." (*Id.* at 23) Therefore, the ALJ
13 concluded Plaintiff was not disabled as defined by the Social Security Act. (*Id.* at 24)

14 **DISCUSSION AND ANALYSIS**

15 Appealing the decision to deny her application for benefits, Plaintiff asserts the ALJ erred in
16 evaluating the medical record and rejecting the opinion of Dr. Bangasan. (Doc. 14 at 7-14) On the
17 other hand, Defendant argues that the ALJ "properly discounted" the opinion of Dr. Bangasan, and did
18 not commit "any reversible error." (Doc. 19 at 9, 12) (emphasis omitted)

19 **A. ALJ's Evaluation of the Medical Evidence**

20 In this circuit, the courts distinguish the opinions of three categories of physicians: (1) treating
21 physicians; (2) examining physicians, who examine but do not treat the claimant; and (3) non-
22 examining physicians, who neither examine nor treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830
23 (9th Cir. 1996). Generally, the opinion of a treating physician is afforded the greatest weight but it is
24 not binding on the ultimate issue of a disability. *Id.*; *see also* 20 C.F.R. § 404.1527(d)(2); *Magallanes*
25 *v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Further, an examining physician's opinion is given more
26 weight than the opinion of non-examining physician. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir.
27 1990); 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). Thus, the courts apply a hierarchy to the opinions
28 offered by physicians.

1 A treating physician's opinion is not binding upon the ALJ, and may be discounted whether or
2 not another physician contradicts the opinion. *Magallanes*, 881 F.2d at 751. An ALJ may reject an
3 *uncontradicted* opinion of a treating or examining medical professional only by identifying "clear and
4 convincing" reasons. *Lester*, 81 F.3d at 831. In contrast, a *contradicted* opinion of a treating or
5 examining professional may be rejected for "specific and legitimate reasons that are supported by
6 substantial evidence in the record." *Id.*, 81 F.3d at 830.

7 When there is conflicting medical evidence, "it is the ALJ's role to determine credibility and to
8 resolve the conflict." *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). The ALJ's resolution of the
9 conflict must be upheld when there is "more than one rational interpretation of the evidence." *Id.*; *see*
10 *also Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992) ("The trier of fact and not the reviewing
11 court must resolve conflicts in the evidence, and if the evidence can support either outcome, the court
12 may not substitute its judgment for that of the ALJ"). Plaintiff contends the ALJ erred in rejecting
13 opinions offered by Dr. Bangasan, a treating physician. Because Dr. Davis offered opinions that
14 conflicted with limitations identified by Dr. Bangasan, the ALJ was required to set forth specific and
15 legitimate reasons to support his rejection of Dr. Bangasan's opinions. *See Lester*, 81 F.3d at 830.

16 The ALJ explained the weight given to the opinions of Drs. Bangasan and Davis as follows:

17 Dr. Bangasan first saw the claimant on January 15, 2015. Further, I find it noteworthy,
18 that until February 19, 2015 (the date of his medical source statement), the Kern
19 County mental health treatment records are generally identical throughout in almost
20 every way, including a finding of "moderate disability with ability to work part time
21 with support."... On that date, the entry was changed to "severe disability, unable to
22 work" even though there is nothing in the records to support such a change and the
23 claimant testified that her symptoms have been at the same level of severity since
24 March 2013. I find the opinion of Dr. Bangasan not credible in light of the dramatic
25 change in treatment records and the fact that he had seen her but one time before he
26 expressed his opinion.

27 I give greater weight to the opinion of Preston Davis, PhD, the Medical Consultant in
28 this case (Exhibit 6A/11-12). While he neither treated nor examined the claimant, his
opinions were more consistent with and supported by the record as a whole, his
opinions are within his area of expertise and he has program knowledge. I based my
RFC find on his opinion and added social restrictions to better reflect those portions of
the claimant's testimony that was supported by the record.

(Doc. 10-3 at 21-22) Plaintiff contends the ALJ's reasons for rejecting the opinion of Dr. Bangasan are
not supported by the record, and are not "legally sufficient reasons," as required by the Ninth Circuit.

(Doc. 16 at 10-14)

1 1. Treatment by Dr. Bangasan

2 As an initial matter, the ALJ rejected the opinion of Dr. Bangasan, in part, because “he had seen
3 her but one time before he expressed his opinion.” (Doc. 10-3 at 22) Significantly, however, this
4 finding is unsupported by the record. As Plaintiff notes, she first saw Dr. Bangasan in 2013, and
5 indicated Dr. Bangasan was her treating therapist in the Disability Report dated December 24, 2013.
6 (See Doc. L4 at 10, citing Doc. 10-7 at 78; see also Doc. 10-7 at 78-79 [identifying the medication
7 prescribed by Dr. Bangasan]) Further, the medical record contains many entries by Dr. Bangasan,
8 including progress evaluation reports from May, June, August, October, and December 2013. (Doc.
9 10-10 at 21-26, 15-20, 65-70, 72-85) Further, Dr. Bangasan approved an assessment and treatment
10 plan given in July 2014. (Doc. 10-11 at 10)

11 Significantly, the Ninth Circuit has indicated that a physician who treats a patient only once
12 may be considered a treating source when the physician’s opinion represents both personal knowledge
13 of a patient’s condition and information communicated by other members of treating team. See *Benton*
14 *v. Barnhart*, 331 F.3d 1030, 1039 (9th Cir. 2003). Because Dr. Bangasan both examined Plaintiff and
15 was clearly aware of her diagnosis history (see Doc. 10-11 at 10; Doc. 10-14 at 28-29), his opinion may
16 be considered that of a treating physician. (Doc. 11-14 at 20)

17 Even if Dr. Bangasan was an examining physician, the opinion of an examining physician is
18 entitled to greater weight than the opinion of a non-examining physician, such as Dr. Davis. *Pitzer*,
19 908 F.2d at 506. The Ninth Circuit determined that while “‘limited observation’ of [a] claimant would
20 be a reason to give less weight to an [examining physician’s] opinion ... than to the opinion of a treating
21 physician, it is not reason to give preference to the opinion of a doctor who has *never* examined the
22 claimant.” *Lester*, 81 F.3d at 821. However, here, the ALJ rejected the limitations identified by Dr.
23 Bangasan in part because the ALJ erroneously believed he saw Plaintiff “but one time,” while giving
24 adopting to the opinion of Dr. Davis, who never examined Plaintiff. (See Doc. 10-3 at 22) Thus, the
25 treatment by Dr. Bangasan—even if limited—fails to support the decision to reject the limitations
26 identified by Dr. Bangasan.

27 2. Treatment notes

28 The Ninth Circuit has determined an opinion may be rejected where there are internal

1 inconsistencies within a physician’s reports. *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595,
2 603 (9th Cir. 1999). The ALJ observed that KCMHD treatment notes consistently identified Plaintiff’s
3 disability as “moderate” with an “ability to work part-time with support” until February 2015, when
4 Plaintiff’s disability was identified as “severe.” (Doc. 10-3 at 21-22) According to the ALJ, there was
5 “nothing in the records to support such as change,” and he rejected the limitations identified by Dr.
6 Bangasan “in light of the dramatic change in treatment notes.” (*Id.* at 22)

7 Notably, however, the ALJ also acknowledges that in November 2014, Plaintiff reported
8 “having worsening anxiety with nightmares.” (Doc. 10-3 at 21) Further, as the ALJ noted: “On
9 February 5, 2015, she reported racing thoughts and continued nightmares. As a result, the doctor
10 prescribed Xanax, Lamictal and Wellbutrin.” (*Id.*) Though the ALJ correctly notes Plaintiff indicated
11 her meds were “actually working” and her nightmares had decreased on February 19 (*id.*), he fails to
12 address Dr. Gill’s observations that Plaintiff was anxious and frustrated— resulting in an additional
13 increase in her medications— and her prognosis was guarded. (Doc. 10-14 at 36, 40)

14 Further, the ALJ fails to explain how the limitations identified by Dr. Bangasan are, in fact,
15 inconsistent with the treatment notes—including notes completed by other physicians such as Drs. Gill,
16 Kim, and Abdelkedous — that repeatedly indicated Plaintiff was limited to *part-time* work, and would
17 need support to sustain even the limited work. Accordingly, the purported inconsistency with the
18 treatment notes fails to support the ALJ’s decision to reject the limitations identified by Dr. Bangasan.

19 3. Consistency with the record

20 Finally, the ALJ indicates that he adopted the opinion of Dr. Preston because “his opinions were
21 more consistent with and supported by the record as a whole” (Doc. 10-3 at 22), thereby suggesting the
22 limitations of Dr. Bangasan were not consistent with the record.

23 The Ninth Circuit has determined that an ALJ may reject limitations “unsupported by the record
24 as a whole.” *Mendoza v. Astrue*, 371 Fed. Appx. 829, 831-32 (9th Cir. 2010) (citing *Batson v. Comm’r*
25 *of the Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2003)). However, when an ALJ believes the
26 treating physician’s opinion is unsupported by the objective medical evidence, the ALJ has a burden to
27 “set[] out a detailed and thorough summary of the facts *and conflicting clinical evidence*, stating his
28 interpretation thereof, and making findings.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986)

1 (emphasis added); *see also Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (“The ALJ must do
2 more than offer his conclusions. He must set forth his own interpretations and explain why they, rather
3 than the doctors’, are correct.”). For example, an ALJ may also discount the opinion of a treating
4 physician by identifying an examining physician’s findings to the contrary and identifying the evidence
5 that supports that finding. *See, e.g., Creech v. Colvin*, 612 F. App’x 480, 481 (9th Cir. 2015).

6 The ALJ failed meet this burden because he did not identify the clinical findings or the
7 objective evidence that he believed to be conflict with the limitations identified by Dr. Bangasan.
8 Rather, the ALJ offered only a summary of the medical record, and concluded the opinion of Dr. Davis
9 was “more consistent” with the record than the opinion of Dr. Bangasan. However, this conclusion
10 “does not achieve the level of specificity [that] prior cases have required.” *Embrey v. Bowen*, 849 F.2d
11 418, 421-22 (9th Cir. 1988). Because the ALJ failed to identify specific evidence that conflicted with
12 the opinion of Dr. Bangasan, the ALJ erred in evaluating the medical record.

13 **B. Remand is Appropriate**

14 The decision whether to remand a matter pursuant to sentence four of 42 U.S.C. § 405(g) or to
15 order immediate payment of benefits is within the discretion of the district court. *Harman v. Apfel*,
16 211 F.3d 1172, 1178 (9th Cir. 2000). Except in rare instances, when a court reverses an administrative
17 agency determination, the proper course is to remand to the agency for additional investigation or
18 explanation. *Moisa v. Barnhart*, 367 F.3d 882, 886 (9th Cir. 2004) (citing *INS v. Ventura*, 537 U.S.
19 12, 16 (2002)). Generally, an award of benefits is directed when:

- 20 (1) the ALJ has failed to provide legally sufficient reasons for rejecting such evidence,
21 (2) there are no outstanding issues that must be resolved before a determination of
22 disability can be made, and (3) it is clear from the record that the ALJ would be required
to find the claimant disabled were such evidence credited.

23 *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). In addition, an award of benefits is directed
24 where no useful purpose would be served by further administrative proceedings, or where the record is
25 fully developed. *Varney v. Sec’y of Health & Human Serv.*, 859 F.2d 1396, 1399 (9th Cir. 1988). The
26 Ninth Circuit explained that “where the ALJ improperly rejects the claimant’s testimony regarding his
27 limitations, and the claimant would be disabled if his testimony were credited,” the testimony can be
28 credited as true, and remand is not appropriate. *Lester*, 81 F.3d at 834.

1 The ALJ failed to identify legally sufficient reasons for rejecting the physical limitations
2 assessed by Plaintiff's treating physician, Dr. Bangasan. Because the ALJ failed to resolve the
3 conflicts in the record regarding Plaintiff's limitations, the matter should be remanded for the ALJ to
4 re-evaluate the medical evidence. *See Moisa*, 367 F.3d at 886.

5 **CONCLUSION AND ORDER**

6 For the reasons set forth above, the Court finds the ALJ erred in evaluating the medical
7 evidence, and the administrative decision should not be upheld by the Court. *See Sanchez*, 812 F.2d at
8 510. Accordingly, the Court **ORDERS**:

- 9 1. The matter is **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further
10 proceedings consistent with this decision; and
11 2. The Clerk of Court **IS DIRECTED** to enter judgment in favor of Plaintiff Patty Martin
12 and against Defendant, Nancy A. Berryhill, Acting Commissioner of Social Security.

13
14 IT IS SO ORDERED.

15 Dated: March 12, 2018

/s/ Jennifer L. Thurston
16 UNITED STATES MAGISTRATE JUDGE