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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOSETTE JEANEEN TORREZ,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

**Case No. 1:17-cv-00095-EPG
FINAL JUDGMENT AND ORDER
REGARDING PLAINTIFF’S SOCIAL
SECURITY COMPLAINT**

This matter is before the Court on Plaintiff’s complaint for judicial review of an unfavorable decision of the Commissioner of the Social Security Administration regarding her applications for supplemental security income and disability insurance benefits. The parties have consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c) with any appeal to the Court of Appeals for the Ninth Circuit. (ECF Nos. 6, 8.)

At the hearing on July 25, 2017, the Court heard from the parties and, having reviewed the record, administrative transcript, the briefs of the parties, and the applicable law, finds as follows:

For the reasons announced by the Court on the record at the conclusion of the parties’ oral argument on July 25, 2017, the Court finds that the decision of the Commissioner of Social Security should be reversed and the case should be remanded for further proceedings.

1 Additional evidence was submitted to the Social Security Administration and made part of
2 the administrative record prior to the final order of the Appeals Council dated March 31, 2016.
3 (AR 5-6). The additional evidence included a function by function assessment by Dr. Exum that
4 was inadvertently omitted from the record prior to the ALJ's decision. (AR 585-86). The
5 previously omitted evidence also included additional evidence related to the period on or before
6 the ALJ's decision, including treatment records from another treating physician, Dr. Ngo, which
7 are consistent with the medical opinion of Dr. Exum. (AR 547-553). "The Commissioner's
8 regulations permit claimants to submit new and material evidence to the Appeals Council and
9 require the Council to consider that evidence in determining whether to review the ALJ's
10 decision, so long as the evidence relates to the period on or before the ALJ's decision." *Brewes v.*
11 *Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1162 (9th Cir. 2012) (citing 20 C.F.R. § 404.970(b)).
12 These additional materials pertain to the period at issue in the ALJ's decision, are material to that
13 opinion, and call into question the bases of the ALJ's decision, including its dismissal of Dr.
14 Exum's opinion based in part on a lack of function by function assessment and reliance on non-
15 treating physicians.

16 On remand, the Agency shall examine the medical opinion of Dr. Ngo, as well as the
17 additional evidence submitted and made part of the record prior to the final decision of the
18 Agency. (AR 5-6). Finally, the Agency shall re-examine the opinion of Dr. Exum in light of the
19 inadvertently excluded documents related to Dr. Exum's opinion.

20 Accordingly, the Court GRANTS Plaintiff's appeal from the administrative decision of
21 the Commissioner of Social Security and the case is remanded to the Social Security
22 Administration. The Clerk of the Court is DIRECTED to enter judgment in favor of Plaintiff
23 Josette Jeanen Torrez and against Defendant Nancy A. Berryhill, Acting Commissioner of
24 Social Security.
25 IT IS SO ORDERED.

26 Dated: July 26, 2017

27 */s/ Eric P. Gray*
28 UNITED STATES MAGISTRATE JUDGE