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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 TIMOTHY SEAN VINCENT,

10 Plaintiff,

11 v.

12 COMMISSIONER OF SOCIAL SECURITY,

13 Defendant.

Case No. 1:17-cv-01578-SAB

ORDER REQUIRING PARTIES TO FILE
SUPPLEMENTAL BRIEFING

14
15 Plaintiff Timothy Sean Vincent (“Plaintiff”) seeks judicial review of a final decision of
16 the Commissioner of Social Security (“Commissioner” or “Defendant”) denying his application
17 for disability benefits pursuant to the Social Security Act. On September 13, 2018, Plaintiff filed
18 an opening brief alleging, as relevant here, that the Administrative Law Judge failed to provide
19 clear and convincing reasons to reject the opinion of his treating physician. (ECF No. 16.)
20 Defendant filed an opposition on October 25, 2018, countering that Plaintiff has misstated the
21 law and since the treating physician’s opinion was contradicted by the opinions of the agency
22 physicians, the ALJ was only required to provide specific and legitimate reasons to reject the
23 treating physician’s opinion. (ECF No. 19.) On November 9, 2018, Plaintiff filed a reply citing
24 Gallant v. Heckler, 753 F.2d 1450, 1454 (9th Cir. 1984) and Winans v. Bowen, 853 F.2d 643
25 (9th Cir. 1987), in arguing that the clear and convincing standard would apply.

26 Where a treating physician’s opinion is not contradicted by another physician, the ALJ
27 can only reject the opinion by providing clear and convincing reasons. Lester v. Chater, 81 F.3d
28 821, 830 (9th Cir. 1995). However, “[i]f a treating or examining doctor’s opinion is contradicted

1 by another doctor’s opinion, an ALJ may only reject it by providing specific and legitimate
2 reasons that are supported by substantial evidence.” Garrison v. Colvin, 759 F.3d 995, 1012 (9th
3 Cir. 2014) (citing 20 C.F.R. § 404.1527(d)(3)). The Court has recently noted that it is seeing an
4 increasing number of cases in which the agency has not obtained the opinion of a consultative
5 examiner. In such situations, there will generally be only a treating physician’s opinion and the
6 contrary opinion of the agency physicians. The Court has considered such opinions
7 contradictory and applied the specific and legitimate reasons standard. Based upon review of the
8 cases cited by Plaintiff, the Court shall require the parties to fully brief the issue of the standard
9 to apply in this situation.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The parties shall each file a supplemental brief addressing whether the “clear and
12 convincing” or “specific and legitimate” reason standard would apply where the
13 treating physician’s opinion is only contradicted by the opinions of the agency or
14 nonexamining physicians on or before November 28, 2018; and
- 15 2. The parties shall file a response to supplemental briefing on or before December
16 12, 2018.

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18 IT IS SO ORDERED.

19 Dated: November 14, 2018


UNITED STATES MAGISTRATE JUDGE