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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHINLI MOU,  
Plaintiff,  
v.  
NANCY BERRYHILL,<sup>1</sup>  
Defendant.

Case No. 15-cv-05194-JCS

**ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT**

Re: Dkt. Nos. 17, 18

**I. INTRODUCTION**

Plaintiff Chinli Mou seeks review of the final decision of the Commissioner of the Social Security Administration (the “Commissioner”) denying her application for disability benefits under the Social Security Act. Mou asks the Court to reverse the Commissioner’s denial of benefits and remand for an award of benefits, or, in the alternative, for further administrative development. The Commissioner requests the Court affirm denial of benefits to Mou, or, in the alternative, deny Mou’s request for an instruction to award benefits and instead remand for further administrative development. For the reasons articulated below, the Court GRANTS Mou’s Motion for Summary Judgment, DENIES the Commissioner’s Motion for Summary Judgment, reverses the decision of the Commissioner, and remands for further administrative proceedings.

**II. BACKGROUND**

**A. Procedural History**

On January 6, 2012, Mou applied for disability insurance benefits, alleging she was unable to work due to depression, high blood pressure, and emotional stress beginning December 10,

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<sup>1</sup> Nancy Berryhill became the Acting Commissioner of Social Security on January 23, 2017, and is therefore substituted for Carolyn W. Colvin as the Defendant in this action. See 42 U.S.C. § 405(g); Fed. R. Civ. P. 25(d). This Order refers to Berryhill as the “Commissioner.”

1 2005 until the December 31, 2008 date she was last insured. Administrative Record (“AR,” dkt.  
2 14) at 12–13, 150. The Social Security Administration denied Mou’s claim on April 24, 2012, and  
3 affirmed the denial on reconsideration on November 5, 2012. *Id.* at 150–53, 155–59. Mou filed a  
4 written request for a hearing regarding these disability benefits on January 8, 2013. *Id.* at 160–61.  
5 Following an initial hearing by Administrative Law Judge Frederick C. Michaud, the matter was  
6 reassigned to Administrative Law Judge Brenton L. Rogozen (the “ALJ”) who held a  
7 supplemental hearing on January 21, 2014 and issued a decision on March 17, 2014 finding Mou  
8 not disabled. *Id.* at 12–26; 100–35. The Social Security Administration Appeals Council  
9 considered and denied Mou’s request for review on September 11, 2015, finding “no reason under  
10 [its] rules to review the Administrative Law Judge’s decision.” *Id.* at 1.

11 Mou filed the present action on November 12, 2015 pursuant to 42 U.S.C. § 405(g), which  
12 gives the Court jurisdiction to review the Commissioner’s final decision. This action was  
13 reassigned to the undersigned magistrate judge on June 6, 2016, and the parties have consented to  
14 the jurisdiction of a United States magistrate judge pursuant to 28 U.S.C. § 636(c). The parties  
15 have filed cross motions for summary judgment pursuant to Local Rule 16-5. *See* Pl.’s Mot. (dkt.  
16 17); Def.’s Mot. (dkt. 18).

17 **B. Mou’s Background**

18 **1. Personal History Prior to Alleged Onset Date**

19 Mou was born in Taipei, Taiwan on December 2, 1962, where she was raised as the oldest  
20 of three girls in a college-educated family. AR 336. Mou considered herself to be a shy kid, but  
21 held a small group of close friends and also attended painting and ballet lessons. *Id.* In middle  
22 school, Mou devoted her free time to the high school entrance exam, which led to Mou qualifying  
23 for the top public high school for girls in the area. *Id.* During high school, Mou took a university  
24 entrance exam and was selected for a prestigious co-ed college. *Id.* at 336–37. During high  
25 school, many of her classmates had secret boyfriends despite a prohibition on contact with boys,  
26 but Mou did not because she “always follow[s] rules.” *Id.* at 336. During college, Mou was  
27 allowed to date but had a strict curfew and was not allowed to smoke, drink, or use drugs. *Id.* at  
28 337. Once again, Mou “did not fight those rules,” because “they were good for [her]. [She] was

1 taught to be good.” *Id.* Mou went to several dances and started dating Steven Yang, an electrical  
2 engineering student, during her third year of college. *Id.*

3           Following college, Mou held a series of jobs in Taipei, working as a computer programmer  
4 and later maintaining a successful career for a consulting firm. *Id.* After marrying Steven Yang in  
5 May 1988, Mou and Yang moved to the United States so Yang could obtain a master’s degree  
6 from University of Maryland. *Id.* at 337–38. Mou and Yang then moved to Silicon Valley where  
7 they bounced around various jobs. *Id.* at 338. Between 1990 and 1998, Mou began working in  
8 the United States as a computer programmer and eventually transitioned into consulting work once  
9 more. *Id.* In 1996, Mou was offered a promotion into a management position but turned it down  
10 because she felt that her English was not good enough to manage people. *Id.* From 1998 to 2000,  
11 Mou decided to obtain a master’s degree in computer systems at Washington City University. *Id.*  
12 Mou enjoyed being back in school and maintained a GPA of 3.8 during her time at Washington  
13 City University. *Id.* When she wasn’t at work or school, Mou enjoyed spending time at libraries  
14 to improve her command of the English language and study various topics, visiting every Bay  
15 Area library she could. *Id.* at 332, 338.

## 16           **2. The King Library Events and Subsequent Personal History**

17           In Fall 2004, Mou encountered the first in a series of difficult situations at the Martin  
18 Luther King Library (“King Library”) at San Jose State University—a university library Mou  
19 frequented often. *Id.* at 332. On one occasion, a Chinese patron of the library complained when  
20 Mou and her husband were talking in a portion of the library designated for talking. *Id.* Mou told  
21 the man the library rules allowed people to talk in the area, but library security was eventually  
22 called and Mou was told to leave the library. *Id.* Sgt. John Laws of the San Jose University State  
23 Police Department was involved in resolving this incident. *Id.* Mou immediately felt the incident  
24 was unfair, “since she had not broken any rules.” *Id.*

25           On February 4, 2005, Mou once again visited the King Library to check out some books.  
26 *Id.* As she was leaving the library that day, Mou passed through a security checkpoint at the same  
27 time as an elderly Caucasian man, at which point the checkpoint’s alarm rang. *Id.* Mou was  
28 stopped by a Library Security Officer (“LSO”), Irene Wong, and forced to go through the

1 checkpoint again while the Caucasian man was not stopped at all. *Id.* Mou asked Wong “why  
2 didn’t you stop the other guy? This is not fair!” *Id.* Wong looked angry and told Mou to identify  
3 herself and wait as she called her supervisor. *Id.* Mou stated she was planning on complaining to  
4 Wong’s supervisor, but proceeded to take her library books and leave to catch her bus. *Id.*

5 On February 7, 2005, Mou returned to the King Library to browse the DVD collection. *Id.*  
6 While browsing, she was approached by Sgt. Laws who asked Mou for her name and birthdate.  
7 *Id.* Mou responded with “Karen,” a name she frequently used in place of her Chinese name, and  
8 provided her birthdate. *Id.* Sgt. Laws then grabbed Mou’s purse and told her that she provided  
9 him with the wrong name, and that he was arresting her for using a fictitious name. *Id.* Following  
10 this incident, Laws took Mou to a police station in San Jose, where she was held for several hours,  
11 and gave her a citation stating she could not return to the King Library for one week and a paper to  
12 sign promising to appear in court. *Id.* This event was the first time Mou was involved in criminal  
13 proceedings in any capacity, and she began looking for an attorney to deal with the matter. *Id.*

14 On February 23, 2005, Mou returned to King Library to spend time in the sixth-floor music  
15 room. *Id.* at 333. That day, Mou left the music room to use the restroom and accidentally locked  
16 herself out of the room. *Id.* At the main circulation desk, one of the librarians told Mou not to  
17 worry and that it happens all the time, and sent an LSO to help her get back in. *Id.* LSO Fritz van  
18 der Hoek then discovered that Mou had used her husband’s library card to check out the music  
19 room key. *Id.* Mou asked to speak to Fritz van der Hoek’s supervisor, Sgt. Laws, who told Mou  
20 she was not allowed to use the sixth floor anymore and refused to allow her to retrieve her things.  
21 *Id.* After this conversation, Mou spoke with a supervisor at the main circulation desk who  
22 eventually let Mou back into the music room for the remainder of her time. *Id.* As she was  
23 leaving the library, Mou spoke with some of the other security officers at the security desk, asking  
24 why she was penalized by Sgt. Laws for using the wrong library card. *Id.* Sgt. Laws subsequently  
25 appeared and tried to arrest Ms. Mou for “interfering.” *Id.* Sgt. Laws gave Mou a citation for  
26 trespassing, told her she could not use the library for one to two weeks, handcuffed her, and  
27 threatened to take her to jail. *Id.* Mou begged him to let her sign the citation instead, and Sgt.  
28 Laws eventually relented and let her go. *Id.* Mou states that she was very upset from this

1 encounter, describing her state of mind following these events accordingly—

2 I was really, really publicly humiliated! It was really wrong! I  
3 followed every direction! . . . I came to this country. I followed the  
4 immigration laws. I paid taxes. What did I do, to deserve this? I  
5 want to be a good citizen! I deserve to have equal rights!

6 *Id.*

7 Following the King Library events, Mou’s day-to-day personal life was substantially  
8 altered in several respects. As a result of and following these events, Mou claims she was unable  
9 to work in any capacity as she “could not function,” and spent “at least two years crying at home  
10 all day long,” as a result of the incident. *Id.* at 112. Mou explains these incidents led to her being  
11 unable to perform basic tasks such as cooking, cleaning, or grocery shopping; her becoming  
12 socially isolated from friends and loved ones; and were directly responsible for her divorce from  
13 her husband in October 2005. *Id.* at 116–17, 334. Mou claims the King Library events continue  
14 to make her depressed, nervous, and anxious despite her having attended weekly psychotherapy  
15 sessions and trying antidepressants. *See id.* at 115–17; 334–35.

16 Yang, Mou’s former husband, also submitted a declaration letter dated October 3, 2013 to  
17 the ALJ detailing his thoughts on Mou’s depression, anxiety and ability to function at the time of  
18 writing. *Id.* at 245. In his letter, Yang stated that he and Mou filed for divorce in October 2005  
19 for irreconcilable differences which was finalized in April of 2006. *Id.* Since filing for divorce,  
20 Yang has “been helping Ms [sic] Mou in every aspect [he] could; however, her depression,  
21 anxiety, and feeling insecure seems unimproved, but getting worse. Those symptoms make it  
22 impossible for Ms [sic] Mou to stay at work or get back to work.” *Id.* Specifically, Yang stated  
23 that he has helped Mou following divorce in a variety of ways, “including but not limited to,  
24 paying medical insurance premium [sic] and bills, property tax, Home Owner Association Fees,  
25 utility bills, etc.” *Id.* Yang also indicated that his remarriage and new family make it “even more  
26 difficult for [him] to continue [sic] support Ms. Mou,” and that “[w]ith her current condition, Ms  
27 [sic] Mou won’t be able to join the workforce to support herself.” *Id.*

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**3. Medical History**

a. Dr. Leith’s Statement

Dr. Ronnie Sue Leith performed an independent psychiatric evaluation for Mou in anticipation of Mou’s civil rights litigation in 2007 pertaining to the King Library events. *Id.* at 330. Dr. Leith completed her evaluation on August 24, 2007, at which point she assessed Mou’s emotional state and rendered a medical opinion regarding Mou’s mental health. *Id.* Dr. Leith based her opinions on four hours of in-person interviews with Mou as well as review of Mou’s verified complaint for damages, Mou’s deposition transcripts, police reports, and letters from Sgt. Laws to Yang and Mou. *Id.* Dr. Leith ultimately concluded, “with a reasonable degree of medical certainty, that Ms. Mou suffered an episode of Major Depressive Disorder as a result of being detained and arrested twice at the Martin Luther King Library in February 2005,” and that “[h]er depression has persisted to the present day, and it is mixed with a significant component of anxiety.” *Id.* at 340. Dr. Leith memorialized Mou’s own description of the background and events discussed above.

i. Mou’s Symptoms and Current Functioning

As discussed above, Mou subjectively believed the King Library events profoundly impacted her ability to maintain personal relationships and subsequently led to her divorce, inability to work, and personal social isolation. *Id.* at 116–17, 334. In her meetings with Dr. Leith, Mou also discussed several other emotional and mental issues that arose from these events.

First, Mou told Dr. Leith that “after February 7, 2005, she was ‘frightened and scared’ every time she went to the King Library.” *Id.* at 333. She noticed that she began making mistakes such as locking herself out of the music room at the library or using the wrong library card when she went to the King Library—mistakes that “occurred only when she was in the King Library.” *Id.* at 334. More generally, Dr. Leith describes Mou’s impression of her emotional state as follows:

She said that after the two incidents in February 2005, she “cried and cried” when she was at home. She wasn’t able to sleep; she would fall asleep and then awaken with nightmares of being arrested, or of people chasing her. She didn’t feel like eating, and initially lost weight, although she subsequently gained it back. She

1 said that for a while, she was afraid to go out: “I didn’t know what  
would happen to me. This place has no justice!”

2 *Id.*

3 Mou claims that despite criminal charges against her eventually being dropped, she  
4 continued to be upset by what had happened to her. *Id.* As a result of the events, Mou “became  
5 convinced that she had been ‘bullied’ because of her poor command of spoken English.” *Id.* Mou  
6 decided to file a civil lawsuit “because she felt that the police had intentionally tried to bully her,  
7 ‘and ever since [Mou] was small, [she] was told to fight back with bullies.’” *Id.* Mou also  
8 attributes her divorce to the King Library events in that “her husband, Steven Yang, never  
9 supported her in her wish to obtain justice,” and that “they argued daily about her decision to file a  
10 lawsuit.” *Id.* Eventually, their arguments came to a head when Yang “began to complain that he  
11 couldn’t handle her being so upset, and that he didn’t have time to make calls for her, because he  
12 had to work.” *Id.* Yang filed for divorce in October 2005. *Id.*

13 As of the date of Dr. Leith’s medical statement—August 24, 2007—Mou claimed that her  
14 depression and anxiety were still present, and when she was reminded of the events, her symptoms  
15 were “as intense as they ever were.” *Id.* Mou was still only regularly getting two to three hours of  
16 sleep a night, constantly having nightmares, and “[o]n two occasions within the past few months,  
17 she has had thoughts of suicide.” *Id.* at 334–35. These suicidal thoughts came as the result of  
18 mental lapses such as forgetting about a boiling pot of water such that the pan boiled dry. *Id.* at  
19 335. Dr. Leith noted that Mou told her “these lapses made her feel ‘useless’: ‘I was always  
20 perfect! I’ve become really stupid! I should just die.’” *Id.* Mou had taken paralegal courses at  
21 West Valley College, where a professor referred her to a school counselor after noticing her crying  
22 in class. *Id.*

23 Dr. Leith describes Mou’s typical day at the time of her 2007 examination as follows:

24 She said that she is living alone, in the townhouse that she and her  
25 husband own and formerly occupied together. Mr. Yang moved out  
26 earlier this year. Ms. Mou awakens between 2:00 and 4:00 a.m., and  
27 is unable to go back to sleep. Sometimes she gets up and starts her  
28 day, and other times she remains in bed until around 6:00 a.m.  
During the school term she would get up, get dressed, eat breakfast,  
and leave for school. She uses public transportation, and the trip to  
campus took an hour. She would eat lunch on campus, and return  
home between 5:00 and 6:00 p.m. She would fix herself a light

1 dinner, and then would try to study. Sometimes she goes to a movie  
2 at night, alone or with friends, to try to distract herself so that she  
3 can fall asleep. She goes to bed at 10:30 or 11:00 p.m., but has  
4 difficulty falling asleep; at times she may lie awake until 1:00 a.m.  
5 On the weekends, she reads books, does homework, and swims.

6 *Id.*

7 ii. Psychological Testing and Results

8 In addition to interviewing Mou regarding her past personal history and the symptoms she  
9 experienced following the King Library events, Dr. Leith also reviewed and summarized  
10 psychological tests performed by Dr. Joanna Berg on July 27, 2007 to support Dr. Leith's ultimate  
11 medical opinions. *Id.* at 338. As an initial note, Dr. Leith found that "Ms. Mou participated  
12 willingly in the testing, and there was no reason to doubt either her effort or the validity of the test  
13 results." *Id.* Mou was administered a variety of psychological tests, including the Minnesota  
14 Multiphasic Personality Inventory-2 (MMPI-2) and the Millon Clinical Multiaxial Inventory-III  
15 (MCMI-III) tests. *Id.*

16 Mou's "MMPI-2 profile depicted her as 'a relatively inflexible individual who lacks  
17 psychological sophistication.'" *Id.* While Mou presented herself for these tests with a "slightly  
18 exaggerated positive self-image in a somewhat guarded manner," there was "clear evidence of  
19 depression, tension, and anxiety." *Id.* Mou's MMPI-2 profile also indicated that Mou is  
20 "'exquisitely sensitive in interpersonal reactions,' and she experiences herself as being unjustly  
21 treated." *Id.* The MMPI-2 profile revealed that Mou "feels hopeless and immobilized by her  
22 chronic worry and distress," and that Mou "generally sees the world as a threatening place." *Id.*  
23 Mou's MMPI-2 profile also showed the existence of long-term personality problems, the precise  
24 nature of which were unclear "because of her overly-positive presentation of herself." *Id.*

25 Dr. Leith stated the MCMI-III profile generally corroborated the findings of the MMPI-2  
26 profile—that Mou was "currently experiencing significant symptoms of anxiety and depression,"  
27 despite her attempts to be perceived in a positive light and downplay her negative feelings. *Id.* at  
28 339. Based on this testing, Mou was described as "'likely to be naive and somewhat immature' in  
her interpersonal relationships." *Id.* Mou was also given the Thematic Apperception Test where  
Mou was "primarily descriptive of the pictures, but revealed sad affects throughout." *Id.* Overall,

1 Dr. Leith concluded “[t]he psychological test findings were consistent with a diagnosis of Major  
2 Depressive Disorder.” *Id.*

3 iii. Medical Findings and Opinions

4 Ultimately, Dr. Leith came to the opinion, “with a reasonable degree of medical certainty,  
5 that Ms. Mou suffered an episode of Major Depressive Disorder as a result of being detained and  
6 arrested twice at the Martin Luther King Library in February 2005. Her depression has persisted  
7 to the present day, and it is mixed with a significant component of anxiety.” *Id.* at 340.

8 Dr. Leith explained the “diagnosis of Major Depressive Disorder is based upon Ms. Mou’s  
9 complaints of sadness, feelings of helplessness and hopelessness, loss of interest in social  
10 activities, sleep disturbance, anxiety, fatigue and loss of energy, difficulty concentrating, feelings  
11 of worthlessness, and thoughts of suicide.” *Id.* Dr. Leith went on to state that “these symptoms  
12 began after the events of February 2005, and they have intensified over time as she has continued  
13 to feel unsupported in her complaints.” *Id.* Dr. Leith also found that “[t]he results of the MMPI-2  
14 and the MCMI-III administered by Dr. Joanna Berg substantiate Ms. Mou’s self-report, showing  
15 significant degrees of depression, worry and anxiety.” *Id.* Based on her review of psychological  
16 and other medical records, Dr. Leith rated Mou at a 45 on the Global Assessment of functioning,  
17 “which denotes serious impairment in social and occupational functioning.” *Id.* at 341.

18 Dr. Leith went on to state “Mou’s reaction to the events of February 2005 has been both  
19 intense and persistent; but [Dr. Leith] believe[s] it can be understood in light of her cultural  
20 background and her personality makeup.” *Id.* Dr. Leith indicated that Mou’s personality, and in  
21 particular, “[h]er sensitivity to interpersonal slights makes her quick to take offense,” such as in  
22 the King Library events, where “[t]he more the situation escalated, the more misunderstood she  
23 felt and the angrier she became.” *Id.* Dr. Leith noted that the King Library altercations were  
24 always with other Asians, which likely exacerbated Mou’s reaction to the events, as “[f]eeling at a  
25 competitive disadvantage with other Asians because of her language ‘disability’ may have further  
26 contributed to Ms. Mou’s intense response.” *Id.* Dr. Leith pointed to Mou’s rigid personality  
27 structure as an additional exacerbating factor, as “[s]he has been overwhelmed with a sense of  
28 victimization; and she is determined to pursue redress.”

1 Dr. Leith noted that “[t]he frustration she has experienced as she seeks vindication has  
2 increased [Mou’s] sense of alienation from society and exacerbated her feelings of isolation and  
3 depression.” *Id.* at 342. Specifically, Dr. Leith found that Mou’s divorce and inability to work  
4 following the King Library events came as the result of those events in that Mou’s “preoccupation  
5 with this matter has cost her her marriage, since her husband proved to be unsupportive, and it has  
6 prevented her from returning to work.” *Id.* Dr. Leith concluded by finding “that Ms. Mou has  
7 suffered a major depressive disorder as a result of the events in the King Library in February 2005.  
8 Her personality structure and cultural factors may have increased her vulnerability to such injury.”  
9 *Id.* at 342. Dr. Leith noted that Mou’s “complaints of depression and anxiety are supported by the  
10 results of psychological testing, and there is no evidence of symptom exaggeration or  
11 malingering.” *Id.* Finally, Dr. Leith stated that Mou’s depression has “been inadequately treated  
12 by the Chinese medicine she prefers,” and that she “would probably benefit from treatment with  
13 antidepressant medication and supportive psychotherapy, extending for approximately one year  
14 beyond the resolution of the lawsuit.” *Id.*

15 b. Dr. Chiu’s Mental Medical Source Statement

16 Dr. Collins Chiu began acting as Mou’s treating psychologist on August 22, 2012,  
17 providing weekly therapy sessions for Mou from that date forward. *Id.* at 278. In her Mental  
18 Medical Source Statement, dated June 24, 2013, Dr. Chiu listed August 22, 2012 as the alleged  
19 onset date, “as this is the date [the] patient alleges becoming disabled.” *Id.* In the space available  
20 to indicate a different onset date if Dr. Chiu found such a date “more appropriate” than the date  
21 identified by Mou, Dr. Chiu wrote “N/A.” *Id.* The Court notes that although Dr. Chiu indicated  
22 that Mou had alleged an onset date of August 22, 2012, Mou’s filings with the Social Security  
23 Administration specify an onset date of December 10, 2005, *e.g.*, *id.* at 222, 231, 240, 244, and  
24 one of her pre-hearing briefs states that she was “unable to amend [her] alleged onset date to  
25 August 22, 2012 as that date is subsequent to her December 31, 2008 Date Last Insured,” *id.* at  
26 251.

27 Following her sessions with Mou, Dr. Chiu identified the following psychological  
28 conditions or symptoms present in Mou: depression, loss of interest in activities, memory deficits,

1 easy distractibility, appetite disturbance, anxiety/panic attacks, decreased energy, sleep  
2 disturbance, problems interacting with the public, difficulty with concentration, and feelings of  
3 guilt and/or worthlessness. *See id.* at 278. Dr. Chiu also noted isolation/social withdrawal, mood  
4 swings, nightmares, social/interaction difficulties/conflicts, difficulty making daily decisions,  
5 inability to drive, and feeling overwhelmed as additional symptoms present in Mou at the time of  
6 the report. *Id.*

7 In analyzing the impact of Mou’s symptoms on her ability to perform work-related mental  
8 functions, Dr. Chiu found that Mou’s understanding and memory, sustained concentration and  
9 persistence, social interaction, and ability to perform other functional tasks were all moderately or  
10 markedly limited.<sup>2</sup> *See id.* at 279–80. In her analysis, Dr. Chiu stated that her assessment of  
11 Mou’s understanding and memory was directly based on Mou’s inability to sustain or keep work  
12 since 2005 due to the severity of her symptoms. *Id.* at 279. Similarly, Dr. Chiu explained that her  
13 conclusions on sustained concentration and persistence levels were based on Mou’s inability to  
14 perform work since 2005 and self-reported difficulty in listed tasks. *Id.* at 280. With respect to  
15 functional limitations and limitations to social interaction, Dr. Chiu identified as the grounds for  
16 her opinion Mou’s reports of having significant difficulties with trusting people, interacting with  
17 others, and maintaining relationships, as well as her lack of a social support network. *Id.*  
18 Additionally, Dr. Chiu found that on a monthly basis, Mou “would report episodes of  
19 decompensation, mainly due to social/interpersonal conflicts with people. As a result, [she] would  
20 experience . . . depressive and anxiety symptoms.” *Id.* at 281. Dr. Chiu concluded that the listed  
21 limitations lasted twelve continuous months at the assessed severity, drugs and alcohol were not  
22 contributing factors to the disability, and Mou was not a malingerer. *Id.* at 279, 281.

23 While Dr. Chiu explicitly pointed to August 22, 2012 as the onset date for the symptoms,  
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25 <sup>2</sup> Dr. Chiu’s report defines “moderate” limitations as “[a]ble to perform designated work-related  
26 mental functions, but will have limitations that impair the effective performance of the task  
27 incrementally for a total between 11% to 20% of the 8-hour workday or 40-hour workweek.” AR  
28 at 279. “Marked” limitations are defined as “[a]ble to perform designated work-related mental  
functions, but will have limitations that impair the effective performance of the task incrementally  
for a total of more than 20% of an 8-hour workday or 40-hour workweek.” *Id.*

1 diagnoses, findings, and limitations detailed in her report, Dr. Chiu’s reports include several  
2 statements that indicate at least some symptoms actually began in 2005, around the time the King  
3 Library events occurred. For example, in the section of Dr. Chiu’s medical report devoted to how  
4 Mou’s conditions and/or symptoms impacted her ability to perform work, Dr. Chiu stated that  
5 Mou “stopped working since 2005 as she struggles with symptoms of depression & panic attacks.”  
6 *Id.* Similarly, as discussed above, Dr. Chiu explained or based many of her medical findings as to  
7 the severity of Mou’s mental impairments on symptoms beginning in 2005.

8 c. Dr. Mohammed’s Medical Expert Testimony

9 During the January 21, 2014 supplemental administrative hearing, discussed in more detail  
10 in the following section, Dr. Shakil Mohammed testified as an impartial medical expert. *See id.* at  
11 102–10. At the outset, Dr. Mohammed explained that he did not directly examine or treat Mou,  
12 that he did not know Mou personally, and that his medical conclusions were solely based on his  
13 review of the record. *Id.* at 102–03. Dr. Mohammed concluded that Mou had two medically  
14 determinable impairments which met listing criteria—12.04 major depressive disorder and 12.06  
15 panic disorder and post-traumatic stress disorder (“PTSD”). *Id.* at 103. In coming to this  
16 conclusion, Dr. Mohammed emphasized the significance of the medical findings contained within  
17 Dr. Chiu’s medical source statement (Exhibit 5F, *id.* at 277–81), Dr. Chiu’s treatment notes  
18 (Exhibit 6F, *id.* at 282–311), and Dr. Leith’s consultative psychiatrist examination (Exhibit 8F, *id.*  
19 at 330–42). *Id.* at 104. Dr. Mohammed also indicated that, while Dr. Chiu found marked  
20 limitations to social functioning and daily living, Dr. Mohammed’s own opinion is moderate to  
21 marked limitations in these areas. *Id.* Dr. Mohammed also saw “no particular social  
22 decompensation” in Mou. *Id.* Dr. Mohammed did not explain his basis for differing from Dr.  
23 Chiu’s own impressions of marked limitations in these areas or how his assessment of moderate to  
24 marked limitations satisfies the statutory Paragraph B criteria. *Id.* at 104–05.

25 Following this testimony, the ALJ questioned Dr. Mohammed on his basis for his opinions  
26 given that there are no mental health records between that provided by Dr. Leith in 2007 and those  
27 provided by Dr. Chiu in 2012. *Id.* at 105. The ALJ’s concerns with this gap in medical evidence  
28 are apparent from her questioning of Dr. Mohammed:

1                   So we would need to have some information, would we not, in order  
2                   to determine what her condition was? I mean if it was six months  
3                   apart or a year or less, I can see a connection between the two. But  
4                   five years is kind of a long time. So people’s conditions can change  
                    over time. So wouldn’t we need to know what she was doing during  
                    those five years?

5                   *Id.* at 106. Dr. Mohammed responded by stating Dr. Leith’s records from 2007 indicate that Mou  
6                   was unable to work at the time and that she had developed PTSD and a panic disorder after the  
7                   incident in 2005. *Id.* at 107–08. The ALJ rebutted, “[b]ut how do we know what her condition  
8                   was like and what she was doing and not doing and what she was able to do and not able to do if  
9                   there are no records for that five-year period?” *Id.* at 108. Dr. Mohammed reiterated his  
10                  conclusions regarding PTSD and the panic disorder, as well as that it is his opinion “that with  
11                  those two diagnoses and what was going on, that she really couldn’t work,” but conceded that he  
12                  did not “have any documents” regarding the intervening period. *Id.*

13                  Mou’s attorney briefly questioned Dr. Mohammed at the hearing, asking him whether the  
14                  symptoms described in medical reports from Dr. Leith in 2007 were similar to those noted by Dr.  
15                  Chiu in 2012. *Id.* at 107–08. Dr. Mohammed mentioned that Dr. Chiu described in detail  
16                  indications of social isolation in Mou that were not included in Dr. Leith’s statement from 2007.  
17                  *Id.* at 108. Mou’s attorney then asked whether it would be consistent with PTSD to have difficulty  
18                  seeking help in the form of psychiatric treatment to which Dr. Mohammed responded, “Not  
19                  necessarily. It depends on the person.” *Id.*

20                                   d. Dr. Yeh’s Medical Notes

21                  The record includes little medical evidence relating to Mou’s mental and emotional  
22                  struggles beyond the statements by Dr. Leith, Dr. Chiu, and Dr. Mohammed. In medical records  
23                  from Mou’s treating physician, Dr. George Yeh, dated between June 2006 and August 2013, Dr.  
24                  Yeh mentions virtually nothing in his notes regarding mental or emotional issues affecting Mou.  
25                  *See id.* at 258–68, 313–329. Dr. Yeh’s medical notes largely focus on Mou’s physical symptoms  
26                  or lack thereof between 2006 and 2013, which Mou’s present motion does not contend give rise to  
27                  a finding disability. *See generally id.* at 312–29. Dr. Yeh does note, however, that Mou exhibited  
28                  heightened stress on January 25, 2007, *id.* at 328, that Mou was not active, not sleeping well, and

1 depressed on July 17, 2008, *id.* at 260, and that he provided prescriptions to Mou for the  
2 antidepressant Paxil in July 2008 and later between October 2012 and August 2013, *id.* at 260,  
3 322–23.

4 **C. The Administrative Hearings**

5 **1. The October 10, 2013 Hearing**

6 On October 7, 2013, Mou filed a pre-hearing brief for the October 10, 2013 administrative  
7 hearing before Administrative Law Judge Frederick C. Michaud. *See id.* at 239–44. In this brief,  
8 Mou claimed that she was severely impaired by PTSD and Major Depressive Disorder warranting  
9 a finding of disability under the five-step analysis used pursuant to the Social Security Act, with  
10 an onset date of December 10, 2005. *Id.* at 240. Under this analysis, Mou claimed that because  
11 she was not engaged in substantial gainful activity after her onset date, because she was severely  
12 impaired, and because she was unable to perform work, Mou’s impairments should be deemed  
13 disabilities under the Social Security Act. *Id.* at 241–44. In her pre-hearing brief, Mou notably  
14 contended she did not have any impairment or combinations of impairments equal to or exceeding  
15 statutory definitions under step three of the five-step analysis. *Id.* at 242.

16 At the October 10, 2013 administrative hearing, Judge Michaud questioned Mou and her  
17 attorney, Ashley Meyers, regarding Mou’s disability claim. *Id.* at 128–35. Judge Michaud began  
18 his examination of Mou by establishing her education and work history. Mou explained that she  
19 had obtained a master’s degree in computer systems but she had not worked since 2005. *Id.* at  
20 131. Mou explained that her most recent work experience was as a system or business analyst. *Id.*

21 During the hearing, Judge Michaud indicated he was underwhelmed by the relevancy of  
22 Mou’s medical records from Dr. Yeh submitted to the Court for the proceeding. *Id.* Meyers  
23 opined that Yeh’s records were mostly useful in that they indicate Yeh prescribed Paxil, an anti-  
24 depressant, for Mou on July 18, 2008. *Id.* Meyers also revealed there were psychiatric  
25 evaluations made for Mou in anticipation of Mou’s prior civil rights lawsuit that had not been  
26 previously introduced in the administrative proceedings. *Id.* at 131–32. Judge Michaud agreed  
27 with Meyers that the hearing should be rescheduled for a later date to allow for the submission and  
28 consideration of these psychiatric evaluations, thus concluding the October 10, 2013 hearing. *Id.*

1 at 132–34.

2 **2. The January 21, 2014 Hearing**

3 Following the October 10, 2013 hearing, a supplemental hearing was set for January 21,  
4 2014. The January 21, 2014 hearing was originally to be heard by Judge Michaud, but later was  
5 reassigned to Administrative Law Judge Brenton L. Rogozen due to a scheduling conflict. *See id.*  
6 at 254. On January 15, 2014, Mou submitted a pre-hearing brief attaching Dr. Leith’s  
7 psychological assessment as an exhibit for the supplemental hearing. *Id.* at 251. In this briefing,  
8 Mou claimed the Dr. Leith’s medical opinions were consistent Dr. Chiu’s opinions, reflecting a  
9 consistency in the severity and presence of PTSD and depression symptoms in Mou since the  
10 alleged onset date. *Id.* at 252. Mou submitted an additional pre-hearing brief on January 21,  
11 2014, objecting to the last minute reassignment of the matter to Judge Rogozen and requesting a  
12 postponement of the hearing to a future date with a reassignment of the case back to Judge  
13 Michaud. *Id.* at 254.

14 At the January 21, 2014 supplemental hearing, the ALJ, Judge Rogozen, began the hearing  
15 despite Mou’s objections to the last minute reassignment of the matter to him. At the hearing,  
16 Mou, Dr. Mohammed (the medical expert), and Kenneth Ferra<sup>3</sup> (a vocational expert) provided  
17 testimony related to Mou’s disability claims. *See generally id.* at 98–127.

18 Meyers and the ALJ questioned Dr. Mohammed in his capacity as a medical expert. *Id.* at  
19 102–10. Dr. Mohammed had not previously met with or discussed the matter with Mou and based  
20 his analysis and medical opinions solely on his review of the record. *Id.* at 102. As discussed  
21 above in greater detail, Dr. Mohammed concluded that Mou had depression meeting the criteria of  
22 Listing 12.04 and anxiety meeting the criteria of Listing 12.06 as supported by his review of the  
23 record. *Id.* at 103. Dr. Mohammed also stated that in light of the medical opinions by Dr. Chiu  
24 and Dr. Leith regarding Mou’s mental state in 2005, his opinion was “that with those two  
25 diagnoses and what was going on, that she really couldn’t work.” *Id.* at 108.

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27 <sup>3</sup> Ferra’s name is sometimes spelled “Farah” in the record. *See, e.g.*, AR at 120 (transcript of  
28 administrative hearing); *but see id.* at 48 (letter to Kenneth Ferra requesting his testimony as a  
vocational expert at the hearing).

1           Meyers and the ALJ asked Mou to discuss her own impressions of her emotional state  
2 immediately following the King Library events. *Id.* at 111–120. Mou stated she would cry  
3 constantly for a period of about two years following the King Library events and that her divorce  
4 was a direct result of the events and her subsequent reaction. *Id.* at 111–13. According to Mou:

5                   I spend at least two years crying at home all day long because I have  
6 to went [sic] through all this. And I could not function, my brain  
7 could not function. I could not do anything. I could not eat  
8 properly, I could not cook, I could not even face myself. I have to  
9 go to Salvation Army to eat. I used to cook. I used to cook a lot.  
10 But I lost it. I could not do anything. I just cry all day long.

11 *Id.* at 112. Mou explained that despite her constant emotional turmoil resulting from the events,  
12 she did not see a psychiatrist around the time of the King Library events due to her ex-husband’s  
13 general refusal to take Mou to a psychiatrist and the Chinese cultural belief “that unless that  
14 person went over 100 percent crazy it’s really not [sic] to see the psychiatrist.” *Id.* at 113. Mou  
15 eventually started seeing Dr. Chiu in 2012 because “somebody suggested [it] and [she saw herself]  
16 not recovering, not going anywhere.” *Id.*

17           When Meyers asked Mou why she would have difficulty with a less stressful job where she  
18 wasn’t working around others, Mou responded that she did not think there was a job like that  
19 available because, in her words, “[n]obody likes me, nobody cares about me, and nobody cares  
20 about my rides [sic]. That’s pretty much there’s no exceptions.” *Id.* at 114–15. Mou testified that  
21 she no longer had friends despite being called a “social bird” in the past, that she could no longer  
22 concentrate and focus following the King Library events, and that her PTSD had worsened since  
23 2007 as a result people mistreating her when she goes out. *Id.* at 115–16. Mou also stated that the  
24 medications she was taking at the time of the hearing did not do anything for her in limiting her  
25 symptoms. *Id.* at 117. At the time of the hearing, Mou stated she was no longer able to keep her  
26 apartment clean as she slowly lost the concentration necessary to make her mind up and determine  
27 what to do around the house. *Id.* at 117–18.

28           When questioned by the ALJ, Mou detailed her day-to-day life following the King Library  
events. Mou stated she was currently using her settlement from the civil lawsuit surrounding the  
King Library events to pay for her rent. *Id.* at 118–19. Mou lost the ability to go grocery

1 shopping and cook over time, which led to her husband doing her grocery shopping prior to the  
2 settlement of the lawsuit as well as Mou more frequently going to Salvation Army for free meals.  
3 *Id.* at 119. Because she does not drive, Mou took the train to Salvation Army, and generally only  
4 ate one meal a day. *Id.* at 119–20.

5 The vocational expert, Ferra, testified regarding his opinions of Mou’s relevant past work  
6 experience and future job prospects. *See id.* at 122–26. Ferra stated that Mou’s relevant past work  
7 experiences were as a program analyst and systems analyst, both classified as sedentary and  
8 skilled in nature. *Id.* at 122. Ferra stated that while even a large restriction on speaking with the  
9 public (limited to up to 5% of the workday) would not restrict Mou’s ability to perform past jobs,  
10 a similar restriction on communication with co-workers and supervisors would prevent Mou from  
11 performing those jobs. *Id.* at 123–24. Ferra noted that if Mou had a less severe restriction to  
12 communication with co-workers and supervisors (limited to up to 33% of the workday), there  
13 would be jobs that could accommodate this restriction. *Id.* at 124.

14 In responding to the ALJ’s hypothetical, Ferra then stated he did not believe a hypothetical  
15 individual who “is less than 50 years of age, with more than a high school education, college  
16 educations, prior work that was similar to the claimant here . . . that would need a job that’s  
17 unskilled and would have rare contact with either the public or co-workers and supervisors” would  
18 be able to find jobs on the national economy. *Id.* at 124. Ferra explained there were no jobs on  
19 the national market for this hypothetical individual because “we’re restricting the access to the co-  
20 workers and the supervisors to an extreme that would not be practical,” while reiterating that jobs  
21 would likely be available to a hypothetical individual with a less extreme restriction of one-third  
22 of the day for communications with co-workers. *Id.* With this less extreme restriction, Ferra  
23 listed assembler, cleaner, and packing line worker as examples of unskilled jobs that a  
24 hypothetical individual could perform. *Id.* at 125. However, Ferra reiterated that all of the  
25 available jobs would require about one-third of the day contact with other people, and a more  
26 extreme limitation would make these jobs unfeasible. *Id.* Meyers posed an additional factor to the  
27 hypothetical of “somebody who would have difficulty responding appropriate to criticism from a  
28 supervisor,” which Ferra described as likely unquantifiable, concluding this behavior would only

1 affect his analysis if it impacts the ability to complete job-related tasks. *Id.* at 126.

2 **D. ALJ Analysis and Findings of Fact**

3 Prior to resolving the substantive legal analysis regarding Mou’s disability claims, the ALJ  
4 rejected Mou’s objections to the reassignment of the matter from Judge Michaud to Judge  
5 Rogozen.<sup>4</sup> Mou’s present motion does not contend that improper reassignment of the matter is  
6 grounds for reversal.

7 **1. Legal Standard for Disability Analysis**

8 a. Five-Step Analysis

9 Disability insurance benefits are available under the Social Security Act when an eligible  
10 claimant is unable “to engage in any substantial gainful activity by reason of any medically  
11 determinable physical or mental impairment . . . which has lasted or can be expected to last for a  
12 continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A); *see also* 42 U.S.C.  
13 § 423(a)(1). A claimant is only found disabled if his physical or mental impairments are of such  
14 severity that he is not only unable to do his previous work but also “cannot, considering his age,  
15 education, and work experience, engage in any other kind of substantial gainful work which exists  
16 in the national economy.” 42 U.S.C. § 423(d)(2)(A). The claimant bears the burden of proof in  
17 establishing a disability. *Gomez v. Chater*, 74 F.3d 967, 970 (9th Cir.), *cert. denied*, 519 U.S. 881  
18 (1996).

19 The Commissioner has established a sequential five-part evaluation process to determine  
20 whether a claimant is disabled under the Social Security Act. 20 C.F.R. § 404.1520(a). At Step  
21 One, the Commissioner considers whether the claimant is engaged in “substantial gainful  
22 activity.” 20 C.F.R. § 404.1520(a)(4)(I). If she is, the Commissioner finds that the claimant is not  
23 disabled, and the evaluation stops. If the claimant is not engaged in substantial gainful activity,  
24 the Commissioner proceeds to Step Two to consider whether the claimant has “a severe medically

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26 <sup>4</sup> In support of denying Mou’s reassignment objections, the ALJ explained that Judge Michaud  
27 “postponed the hearing to give the claimant additional time to submit psychological evaluations  
28 from prior to the claimant’s date last insured,” and that “the record does not indicate that the  
previous ALJ ‘heard’ the case or that he was prepared to ‘issue the decision’ having heard the  
case.” *Id.*

1 determinable physical or mental impairment,” or combination of such impairments, which meets  
2 the duration requirement in 20 C.F.R. § 404.1509. An impairment is severe if it “significantly  
3 limits [the claimant’s] physical or mental ability to do basic work activities.” 20 C.F.R.  
4 § 404.1520(c). If the claimant does not have a severe impairment, disability benefits are denied at  
5 this step. If one or more impairments are severe, the Commissioner will next perform Step Three  
6 of the analysis, comparing the medical severity of the claimant’s impairments to a compiled listing  
7 of impairments that the Commissioner has found to be disabling. 20 C.F.R. § 404.1520(a)(4)(iii).  
8 If one or a combination of the claimant’s impairments meet or equal a listed impairment, the  
9 claimant is found to be disabled. Otherwise, the Commissioner proceeds to Step Four and  
10 considers the claimant’s residual functional capacity (“RFC”) in light of her impairments and  
11 whether she can perform past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv); 20 C.F.R.  
12 § 404.1560(b) (defining past relevant work as “work . . . done within the past 15 years, that was  
13 substantial gainful activity, and that lasted long enough for you to learn to do it”). If the claimant  
14 can still perform past relevant work, she is found not to be disabled. If the claimant cannot  
15 perform past relevant work, the Commissioner proceeds to the fifth and final step of the analysis.  
16 20 C.F.R. § 404.1520(a)(4)(v). At Step Five, the burden shifts to the Commissioner to show that  
17 the claimant, in light of her impairments, age, education, and work experience, can perform other  
18 jobs in the national economy. *Johnson v. Chater*, 108 F.3d 178, 180 (9th Cir. 1997). A claimant  
19 who is able to perform other jobs that are available in significant numbers in the national economy  
20 is not considered disabled, and will not receive disability benefits. 20 C.F.R. § 404.1520(f).  
21 Conversely, where there are no jobs available in significant numbers in the national economy that  
22 the claimant can perform, the claimant is found to be disabled. *Id.*

23 b. Mental Impairment Analysis

24 Where there is evidence of a mental impairment that allegedly prevents a claimant from  
25 working, the Social Security Administration has supplemented the five-step sequential evaluation  
26 process with additional regulations to assist the ALJ in determining the severity of the mental  
27 impairment. *Clayton v. Astrue*, 2011 WL 997144, at \*3 (E.D. Cal. Mar. 17, 2011) (citing 20  
28 C.F.R. §§ 404.1520a, 416.920a). These regulations provide a method for evaluating a claimant’s

1 pertinent symptoms, signs, and laboratory findings to determine whether the claimant has a  
2 medically determinable mental impairment. 20 C.F.R. § 404.1520a(a). In conducting this inquiry,  
3 the ALJ must consider all relevant and available clinical signs and laboratory findings, the effects  
4 of the claimant's symptoms, and how the claimant's functioning may be affected by factors  
5 including, but not limited to, chronic mental disorders, structured settings, medication, and other  
6 treatment. 20 C.F.R. § 404.1520a(c)(1). The ALJ must then assess the degree of the claimant's  
7 functional limitations based on the individual's impairments. 20 C.F.R. § 404.1520a(c)(2).

8 Although analysis under 20 C.F.R. § 404.1520a includes an assessment of the individual's  
9 limitations and restrictions, this is not a residual functional capacity assessment but rather a  
10 component of analyzing the severity of mental impairments at Steps Two and Three of the  
11 sequential evaluation process. SSR 96-8p. The mental residual functional capacity assessment  
12 used at Steps Four and Five requires a more detailed assessment in which the ALJ must address  
13 the various functions contained in the broad categories found in Paragraph B of the adult mental  
14 disorders listed in 12.00 of the Listing of Impairments. *Id.* The listings that are relevant to Mou's  
15 claimed mental disabilities are 12.04 and 12.06.

16 Disorders related to depression are governed by Listing 12.04, for affective disorders. That  
17 listing provides in relevant part:

18 Characterized by a disturbance of mood, accompanied by a full or  
19 partial manic or depressive syndrome. Mood refers to a prolonged  
20 emotion that colors the whole psychic life; it generally involves  
either depression or elation.

21 The required level of severity for these disorders is met when the  
22 requirements in both A and B are satisfied, or when the  
requirements in C are satisfied.

23 A. Medically documented persistence, either continuous or  
intermittent, of one of the following:

24 1. Depressive syndrome characterized by at least four of the  
25 following:

26 a. Anhedonia or pervasive loss of interest in almost  
all activities; or

27 b. Appetite disturbance with change in weight; or

28 c. Sleep disturbance; or

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- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

[subparts A.2 and A.3 discuss symptoms of manic or bipolar syndromes];

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- 1. Repeated episodes of decompensation, each of extended duration; or
- 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
- 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

20 C.F.R. § 404, Subpt. P, App. 1. Listing 12.06, for anxiety-related disorders, provides as follows:

In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for

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example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:<sup>5</sup>

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.

OR

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<sup>5</sup> Paragraph B of Listing 12.06 is identical to Paragraph B of Listing 12.04. As discussed below, the ALJ analyzed these together as the “Paragraph B criteria.”

1 C. Resulting in complete inability to function independently outside  
2 the area of one's home.

3 *Id.* Where the listings refer to "marked" limitations, "it means more that moderate but less than  
4 extreme. A marked limitation may arise when several activities or functions are impaired, or even  
5 when only one is impaired, as long as the degree of limitation is such as to interfere seriously with  
6 [the claimant's] ability to function independently, appropriately, effectively, and on a sustained  
7 basis." *Id.* at 12.00C.

8 **2. ALJ's Application of Five-Factor Test**

9 a. Step One: Substantial Gainful Activity

10 The ALJ began his analysis by concluding that Mou did not work between the alleged  
11 onset date (December 10, 2005) and her date of last insured (December 31, 2008), satisfying step  
12 one of the analysis. AR 15. Because Mou was not engaged in substantial gainful activity during  
13 the relevant period, the ALJ proceeded to step two of the analysis.

14 b. Step Two: Severe Impairments

15 Under step two of the five-factor test, the ALJ concluded that, "[t]hrough the date of last  
16 insured, the claimant had the following severe impairments: major depressive disorder and anxiety  
17 disorder." *Id.* (capitalization altered throughout). The ALJ found that "[t]hese impairments are  
18 established by the medical evidence and are 'severe' within the meaning of the Regulations  
19 because they are more than a slight abnormality or combination of abnormalities that cause the  
20 claimant more than minimal functional limitations." *Id.* The ALJ did not identify the portions of  
21 the record he relied on in coming to this conclusion regarding Mou's mental impairments. *See id.*

22 The ALJ also reviewed the medical records of Dr. George Yeh, M.D., Mou's primary care  
23 physician during the relevant period, to determine whether any of listed physical impairments are  
24 severe under the regulations. *Id.* at 15–16. The ALJ concluded that all listed physical  
25 impairments in Mou's medical records were nonsevere in nature, thus failing to satisfy the  
26 requirements under the step two analysis. *Id.* at 16. Mou does not contest this conclusion. *See*  
27 *generally* Pl.'s Mot.  
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1 c. Step Three: Medical Severity

2 Following his finding that Mou had severe depression and anxiety during the relevant  
3 period, the ALJ held that neither of these mental impairments meet or exceed the criteria detailed  
4 in 20 C.F.R. Part 404, Subpart P, Appendix 1. *Id.* at 16. Specifically, the ALJ found that Mou’s  
5 impairments failed to meet the standards articulated under Paragraph B and Paragraph C of the  
6 listings for depression and anxiety. *Id.* Because either Paragraph B or Paragraph C criteria must  
7 be met under Listings 12.04 (governing depression) and 12.06 (governing anxiety), and those  
8 criteria are identical for both listings, the ALJ analyzed these criteria for both depression and  
9 anxiety collectively, and ultimately concluded that Mou’s impairments did not satisfy either  
10 listing. *Id.*

11 The ALJ concluded Mou did not satisfy at least two of the “Paragraph B” criteria, as  
12 required for the listing for either depression or anxiety, in that Mou (1) was not markedly  
13 restricted in activities of daily living, (2) was not markedly restricted in maintaining social  
14 functioning, (3) was not markedly restricted in maintaining concentration, persistence, or pace,  
15 and (4) did not have repeated episodes of decompensation. *Id.* at 16–17.

16 Because the listings for depression and anxiety can alternatively be established with the  
17 presence of “Paragraph C” decompensation criteria in the absence of “Paragraph B” criteria, the  
18 ALJ next considered whether Mou’s claimed disabilities satisfied “Paragraph C” criteria. The  
19 ALJ concluded, “the evidence fails to establish the presence of the ‘paragraph C’ criteria,” because

20  
21 The evidence of record does not indicate that the claimant has  
22 suffered three episodes of decompensation within 1 year, or an  
23 average of once every four (4) months, each lasting for at least two  
24 (2) weeks; or suffers from a residual disease process that has  
25 resulted in such marginal adjustment that even a minimal increase in  
26 mental demands or change in the environment would be predicted to  
27 cause the individual to decompensate; or has a current history of one  
28 (1) or more years’ inability to function outside a highly supportive  
living arrangement, with an indication of continued need for such an  
arrangement.

26 *Id.* at 17.

27 Because the ALJ concluded that Mou failed to establish either Paragraph B or Paragraph C  
28 criteria with respect to her severe mental impairments, the ALJ held that Mou’s mental

1 impairments did not meet or exceed the listing definitions for depression or anxiety under the step  
2 three analysis. The ALJ thus proceeded to a residual functional capacity assessment to determine  
3 Mou’s ability to perform past relevant work or other jobs in the national economy.

4 d. Step Four: Residual Functional Capacity and Past Relevant Work

5 With respect to Mou’s residual functional capacity to perform work during the relevant  
6 period, the ALJ concluded:

7 After careful consideration of the entire record, the undersigned  
8 finds that, through the date last insured, the claimant had the residual  
9 functional capacity to perform a full range of work at all exertional  
10 levels but with the following nonexertional limitations: is limited to  
semi-skilled work and occasional contact with the public, co-  
workers or supervisors where occasional is defined as up to one  
third of the workday.

11 *Id.* at 17. To reach this conclusion, the ALJ applied a two-step process to analyze Mou’s  
12 symptoms. *Id.* First, it must “be determined whether there is an underlying medically  
13 determinable physical or mental impairment(s).” *Id.* “Second, once an underlying physical or  
14 mental impairment(s) that could reasonably be expected to produce the claimant’s pain or other  
15 symptoms has been shown, the undersigned must evaluate the intensity, persistence, and limiting  
16 effects of the claimant’s symptoms to determine the extent to which they limit the claimant’s  
17 functioning.” *Id.* at 18. “[W]henver statements about the intensity, persistence, or functionally  
18 limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the  
19 undersigned must make a finding on the credibility of the statements based on a consideration of  
20 the entire case record.” *Id.*

21 With respect to the first part of this residual functional capacity analysis, the ALJ held  
22 “that the claimant’s medically determinable impairments could reasonably be expected to cause  
23 the alleged symptoms.” *Id.* at 18. For the second part, the ALJ held that “[b]ased on the  
24 evaluation of Dr. Leith on August 24, 2007 and viewing the evidence in the light most favorable to  
25 the claimant, the undersigned finds that the claimant has the capacity for at least semi-skilled  
26 work.” *Id.* at 24. In coming to this conclusion, the ALJ emphasized Mou’s lack of credibility,  
27 stating “the claimant’s statements concerning the intensity, persistence and limiting effects of  
28 these symptoms are not entirely credible for the reasons explained in this decision.” *Id.* at 18.

1 Specifically, the ALJ held that “[a]llowing that her failure to seek treatment as recommended by  
2 Dr. Leith may, at least in part, be due to cultural factors, the lack of objective clinical and  
3 diagnostic findings supporting the claimant’s allegations prior to her date last insured and her  
4 capacity to handle the rigors of a full class schedule in paralegal studies leaves the undersigned  
5 unable to accord more than partial credibility to the claimant.” *Id.*

6 The ALJ began his analysis by looking to the medical record related to Mou’s claims.  
7 First, the ALJ noted that while Dr. Yeh’s medical notes include a report by Mou of sleeping  
8 poorly and a prescription for Paxil on June 6, 2008 and later on follow-up on July 18, 2008, Dr.  
9 Yeh’s reports contain “no further complaints of depression of sleep disruption through August 20,  
10 2013.” *Id.* at 18–19. In evaluating Dr. Leith’s medical statement from 2007, the ALJ seems to  
11 assign great weight to portions of the statement, such as Dr. Leith’s finding that Mou’s  
12 “depression has been inadequately treated by the Chinese medicine she prefers,” and that Mou  
13 “would probably benefit from treatment with antidepressant medication and supportive  
14 psychotherapy,” but fails to examine, analyze, or weigh the relevancy of many of Dr. Leith’s other  
15 statements, including the ultimate finding of depression. *Id.* at 21–22.

16 With respect to the medical opinions of Dr. Mohammed and Dr. Chiu formed after the date  
17 last insured, the ALJ assigned them great weight as probative of Mou’s level of mental and  
18 emotional functioning at the time the reports were made, but assigned them little to no weight as  
19 relevant to Mou’s level of functioning during the relevant period from 2005 to 2008. *Id.* at 22–23.  
20 For Dr. Chiu’s testimony, the ALJ “accorded this medical source statement great weight to the  
21 extent that it opines on the claimant’s current level of functioning as of August 22, 2012 but little  
22 weight to the extent that it provides no insight as to the claimant’s level of functioning as of  
23 December 10, 2005, her alleged onset date, or prior to December 31, 2008, her date last insured,  
24 and *is therefore essentially irrelevant to this determination.*” *Id.* at 22 (emphasis added). For Dr.  
25 Mohammed’s opinion, the ALJ stated that he “accords little weight to the opinion of the impartial  
26 medical expert to the extent that it extends prior to August of 2012 based on a single evaluation of  
27 the claimant in 2007 by Dr. Leith with no other supporting objective medical evidence.” *Id.* at 23.

28 Following review of the record, the ALJ came to several residual functional capacity

1 conclusions. First, the ALJ concluded “the claimant is limited to only occasional contact with the  
2 public, coworkers or supervisors where occasional means up to one third of the workday.” *Id.* at  
3 23. The ALJ noted that Dr. Leith’s discussion of fear of going out and being arrested was  
4 generally targeted at the King library, and not the public as a whole, as evidenced by Mou’s ability  
5 to go to paralegal classes full time, utilize public transportation, go to movies alone or with  
6 friends, and perform other work or chores. *Id.* Second, the ALJ found that Mou’s above-average  
7 intelligence, capacity for abstract thinking, orientation to time, place, person, and situation, and  
8 capacity to attend college level courses on a full time basis indicate that she had a capacity for at  
9 least semi-skilled work. *Id.* at 24. “In sum, the above residual functional capacity assessment is  
10 supported for the period prior to the claimant’s date last insured of December 31, 2008 by the  
11 psychological evaluation of Dr. Leith dated August 24, 2007, the claimant’s reported level of  
12 functioning and the record taken as a whole.” *Id.*

13 Step four also includes an analysis of whether a claimant is able to perform past relevant  
14 work. Because the “above residual functional capacity contemplates work at the semi-skilled  
15 level,” Mou’s residual functional capacity “precludes the claimant’s prior relevant work performed  
16 at the skilled level.” *Id.* at 24. “Accordingly, the claimant was unable to perform past relevant  
17 work.” *Id.*

18 e. Step Five: Ability to Perform Other Jobs in National Economy

19 Under step five, the ALJ considered, taking into account Mou’s age, education, work  
20 experience, and residual functional capacity, whether there was a significant number of jobs in the  
21 national economy Mou could have performed. *See id.* at 25. At the January 21, 2014 hearing, the  
22 ALJ asked the vocational expert whether there were jobs available for individuals with Mou’s age,  
23 education, work experience, and a residual functional capacity for unskilled work with only  
24 occasional interactions with the general public, co-workers, and supervisors. *Id.* The vocational  
25 expert pointed to three jobs that met these parameters—assembly, cleaner, and packing line  
26 worker. *Id.* Because “[w]ork at the semi-skilled level, as permitted in the above residual  
27 functional capacity, includes the capacity to perform work at the unskilled level,” the ALJ deemed  
28 these jobs to be applicable to Mou. *Id.* The ALJ thus concluded that there was work available to

1 Mou in significant numbers in the national economy to satisfy a finding of non-disability under  
2 step five. *Id.* at 26.

3 Because the ALJ concluded that Mou’s residual functional capacity allowed for semi-  
4 skilled work with only occasional interactions with co-workers, and because ALJ adopted the  
5 vocational expert’s findings that there were jobs meeting these parameters that were adequately  
6 available in both the California and national economies, the ALJ came to his ultimate conclusion  
7 that Mou “was not under a disability, as defined in the Social Security Act, at any time from  
8 December 10, 2005, the alleged onset date, through December 31, 2008, the date last insured.” *Id.*  
9 at 26.

10 **E. Motions for Summary Judgment**

11 **1. Mou’s Motion for Summary Judgment**

12 Mou filed a complaint seeking review of the ALJ’s decision and subsequently moved for  
13 summary judgment on three grounds— (1) that the ALJ violated SSR 83-20 and related authority  
14 by discrediting Dr. Mohammed’s retrospective opinions through the ALJ’s requirement of  
15 contemporaneous treatment or medical evidence, (2) that the ALJ erroneously evaluated Dr.  
16 Chiu’s retrospective opinions, and (3) that ALJ failed to provide clear and convincing reasons for  
17 finding Mou not credible in part. Pl.’s Mot. (dkt. 17) at 8, 11, 15.

18 First, Mou contends that “when evaluating medical expert Dr. Mohammed’s retrospective  
19 opinion, the ALJ violated SSR 83-20 and related authority,” in that “there is no legal requirement  
20 for contemporaneous treatment or medical findings during a period for a claimant to be found  
21 disabled during that period during which disability is alleged or there be any objective medical  
22 evidence during that period.” Pl.’s Mot. at 8 (capitalization altered throughout) (citing SSR 83-  
23 20). Specifically, Mou argues that a “claimant may properly be found disabled solely upon a  
24 retrospective evaluation of a period during which the claimant received no medical treatment  
25 whatsoever.” *Id.* at 9. Mou states that the ALJ committed legal error in finding dispositive “the  
26 absence of objective medical evidence after Dr. Leith’s mid-2007 examinations until Mou’s  
27 treatment with psychologist Dr. Chiu in August 2012.” *Id.* at 10. Mou goes on to state that  
28 because the ALJ correctly did not dispute Mou’s inability to work as of August 2012 (when she

1 began receiving psychological treatment from Dr. Chiu), and because the ALJ did not determine  
2 that Mou’s condition worsened since her date last insured, the later psychological evaluations by  
3 Dr. Mohammed should have been found probative of Mou’s condition prior to her date last  
4 insured. *See id.* at 11. Mou concludes that “[t]he ALJ’s violation of SSR 83-20 — his  
5 requirement for contemporaneous treatment and/or objective medical evidence — was harmful,”  
6 and that “[t]he ALJ’s legal error is the main justification of his rejection of Dr. Mohammed’s  
7 retrospective opinion.” *Id.* On these grounds, Mou urges this Court to find Mou clearly disabled  
8 prior to her date last insured under step three or to remand for a proper evaluation of Dr.  
9 Mohammed’s retrospective opinion. *Id.*

10 Second, Mou contends “the ALJ erroneously evaluated treating psychologist Dr. Chiu’s  
11 retrospective opinions.” *Id.* at 11. (capitalization altered throughout). Specifically, Mou argues  
12 the ALJ is required to present clear and convincing reasons for rejecting the uncontroverted  
13 opinion of a claimant’s treating source, which Dr. Chiu was at the time of treatment. *Id.* Mou  
14 claims that Dr. Chiu’s uncontroverted opinion demonstrates that Mou was substantially more  
15 restricted than the ALJ found, ultimately invalidating the ALJ’s assessment “that Ms. Mou could  
16 perform semi-skilled work with occasional contact with the public, co-workers, and supervisors.”  
17 *Id.* at 13. Mou contends, as with the ALJ’s analysis of Dr. Mohammed, that the ALJ erroneously  
18 failed to understand Dr. Chiu’s opinions as retrospective, that this failure was harmful, and that the  
19 ALJ failed to allege Mou’s condition worsened in a matter that would minimize the applicability  
20 of Dr. Chiu’s findings to Mou in the relevant period. *Id.* at 13–14.

21 Third, Mou argues “the ALJ did not provide clear and convincing reasons for finding Ms.  
22 Mou not credible.” *Id.* at 15. (capitalization altered throughout). In light of the ALJ’s evaluation  
23 that Mou’s culture played a role in her not getting mental health treatment prior to date last  
24 insured, the ALJ’s failure to allege there was significant worsening in Mou’s symptoms, and  
25 erroneous evaluation of medical records, Mou claims that the ALJ improperly discredited her  
26 testimony as to the severity of her symptoms. *Id.* at 15–16. Further, Mou contends that because  
27 “[t]he ALJ accorded ‘great weight’ to Dr. Chiu’s June 2013 opinion that Ms. Mou was markedly  
28 limited in many areas,” the ALJ could not rationally “agree[] with Dr. Chiu’s purported opinions

1 about Ms. Mou’s condition ‘since August 22, 2012’ and find Ms. Mou not credible during the  
2 period during which she was treated by Dr. Chiu.” *Id.* at 16.

3 **2. Commissioner’s Opposition and Cross-Motion for Summary Judgment**

4 In response to Mou’s Motion for Summary Judgment, the Commissioner filed an  
5 opposition and cross-motion for summary judgment requesting this Court uphold the  
6 Commissioner’s denial of benefits “because it was both supported by substantial evidence and free  
7 from legal error,” or, alternatively, remand for further administrative proceedings. Def.’s Mot.  
8 (dkt. 18) at 10. The Commissioner presents two overarching arguments in support of its cross-  
9 motion for summary judgment: (1) “the ALJ’s interpretation of medical evidence was rational and  
10 entitled to deference”; and (2) “the ALJ supported his credibility findings with substantial  
11 evidence and applied the correct legal standards.” *Id.* at 3, 6 (capitalization altered throughout).

12 As an initial matter, the Commissioner claims that even if Mou could otherwise establish a  
13 disability in the relevant time period, she would be unable to collect any benefits because “the  
14 earliest date a Plaintiff can receive [disability insurance benefits] is no earlier than the seventeenth  
15 month preceding the month in which she applied.” *Id.* at 2 (citing 20 C.F.R. § 404.315(a)(4)). In  
16 this instance, “the earliest date Plaintiff would have been eligible to receive [disability insurance  
17 benefits], if she could have established disability, would have been August 2010.” *Id.* Further, the  
18 Commissioner contends that for those who apply after expiration of insured status, claimants must  
19 establish that their disability currently exists and continuously existed from a date prior to lapse of  
20 insurance to the date of their application. *Id.*

21 With respect to the ALJ’s analysis of the medical evidence, the Commissioner claims that  
22 “the ALJ properly evaluated conflicting medical evidence by summarizing it in detail and  
23 interpreting it.” Def.’s Mot. at 4 (citing AR 15–23). The Commissioner claimed that “[t]he ALJ’s  
24 reasoning set forth in his nearly 8-page discussion of the medical evidence provides sufficient  
25 guidance for this Court to draw inferences as to why the ALJ rejected the more restrictive medical  
26 opinions and Plaintiff’s subjective complaints in assessing her credibility.” *Id.* With respect to the  
27 ALJ’s rejection of the purportedly retrospective aspects of Dr. Chiu’s opinions, the Commissioner  
28 stated, “[w]hen a Plaintiff has more than one treating physician, the ALJ can choose to accept the

1 substantiated opinion of one or more of them over the unsubstantiated opinion of another.” *Id.* at  
2 5. Even if you classify Dr. Chiu’s opinion as retrospective, the Commissioner claims, “his basis  
3 for this ‘retrospective’ opinion is Plaintiff’s self-reports, which are contradicted by her reports to  
4 Dr. Yeh and her activities of daily living during the period.”<sup>6</sup> *Id.* The Commissioner contends  
5 “the ALJ’s rejection of Dr. Mohammed’s ‘retrospective’ opinion, which was based upon Dr.  
6 Chiu’s opinion that was premised upon Plaintiff’s self-reports . . . was supported by substantial  
7 evidence and free of harmful legal error.” *Id.* (citing *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th  
8 Cir. 2012)). The Commissioner concludes by stating, “[t]he record contains conflicting medical  
9 evidence and, in such a situation, a reviewing court should defer to the ALJ’s interpretation.  
10 Substantial evidence in the record supports The [sic] ALJ’s reasoning, and therefore her decision  
11 should be affirmed.” *Id.* at 7 (internal citations omitted).

12           Regarding the ALJ’s decision to only partially credit Mou’s testimony, the Commissioner  
13 argues, “the ALJ supported his credibility findings with substantial evidence and applied the  
14 correct legal standards.” *Id.* at 6 (capitalization altered throughout). The Commissioner contends  
15 the ALJ’s statements about Mou’s daily activities, such as attending college, making meals, and  
16 using public transportation, are valid reasons for the ALJ to call into question Mou’s credibility.  
17 *Id.* at 7. The Commissioner also points to the ALJ’s consideration of lack of objective medical  
18 evidence prior to the date last insured and Mou’s refusal to take recommended prescriptions as  
19 additional reasons why the ALJ properly questioned the credibility of Mou’s testimony in his  
20 analysis and review of the record. *Id.* at 8. In sum, the Commissioner contends, “the ALJ’s  
21 decision followed a logical sequence and established his reasons for rejecting Plaintiff’s testimony  
22 which were based on his analysis of the entire record,” and is therefore entitled great weight. *Id.*  
23 at 9. The Commissioner therefore “requests this Court affirm the Commissioner’s decision  
24 because it was both supported by substantial evidence and free from legal error.” *Id.* at 10  
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26 <sup>6</sup> The Commissioner specifically identifies several activities falling within the relevant period,  
27 including “taking 12 credits in paralegal course at West Valley College, going to karate classes,  
28 going to the movies by herself, or with friends; and the ability to use public transportation.”  
Def.’s Mot. at 5.

1 (quoting *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)).

2 **3. Mou’s Reply**

3 In her reply, Mou takes issue with several of the Commissioner’s arguments while also  
4 reiterating the bases for her requested relief. Mou states that the Commissioner’s contention that  
5 the ALJ found Mou’s condition to have deteriorated was a baseless and improper post hoc  
6 rationalization on the Commissioner’s part. Pl.’s Reply (dkt. 20) at 2–3. Instead, Mou contends  
7 the ALJ did not allege worsening and therefore the retrospective opinions on record are relevant to  
8 Mou’s symptoms while insured. *See id.* at 3. Mou also takes issue with the Commissioner’s  
9 suggestion that Mou would not be entitled to benefits because the application was filed three years  
10 after the date last insured, stating “[t]he date of Ms. Mou’s [disability insurance benefits]  
11 application (January 6, 2012) is not an issue,” and that “[t]he ALJ adjudicated Ms. Mou’s claim of  
12 disability through her December 31, 2008 date last insured.” *Id.*

13 Mou also claims that the Commissioner improperly invoked 20 C.F.R. § 404.1530, the  
14 “failure-to-follow-prescribed-treatment regulation,” to find Mou not disable under a theory that  
15 “[t]he regulation states that ‘[i]n order to get benefits, you must follow treatment prescribed by  
16 your physician if this treatment can restore your ability to work.’” *Id.* at 7 (second alteration in  
17 original). Mou argues that because she was not formally deemed disabled, this requirement would  
18 not apply to her. *Id.* (citing *Orn v. Astrue*, 495 F.3d 625, 637 (9th Cir. 2007)). Mou also contends  
19 that her education and daily activities should not be used to discredit her during a window of time  
20 where the ALJ assigned “great weight” to Dr. Chiu’s and Dr. Mohammed’s opinion insofar as  
21 they relate to Mou’s symptoms in 2012. *Id.* at 8.

22 **III. ANALYSIS**

23 **A. Legal Standard Under 42 U.S.C. § 405(g)**

24 When asked to review the Commissioner’s decision, the Court takes as conclusive any  
25 findings of the Commissioner which are free from legal error and supported by “substantial  
26 evidence.” 42 U.S.C. § 405(g). Substantial evidence is “such evidence as a reasonable mind  
27 might accept as adequate to support a conclusion,” and it must be based on the record as a whole.  
28 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Substantial evidence means “more than a mere

1 scintilla,” *id.*, but “less than a preponderance.” *Desrosiers v. Sec’y of Health & Human Servs.*,  
2 846 F.2d 573, 576 (9th Cir. 1988). Even if the Commissioner’s findings are supported by  
3 substantial evidence, they should be set aside if proper legal standards were not applied when  
4 weighing the evidence and in reaching a decision. *Benitez v. Califano*, 573 F.2d 653, 655 (9th Cir.  
5 1978). In reviewing the record, the Court must consider both the evidence that supports and  
6 detracts from the Commissioner’s conclusion. *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir.  
7 1996) (citing *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985)).

8 If the Court identifies defects in the administrative proceeding or the ALJ’s conclusions,  
9 the Court may remand for further proceedings or for a calculation of benefits. *See Garrison v.*  
10 *Colvin*, 759 F.3d 995, 1019–21 (9th Cir. 2014).

11 **B. Relevance of Retrospective Medical Opinions by Dr. Chiu and Dr. Mohammed**

12 In evaluating Dr. Chiu’s opinion, the ALJ “accorded this medical source statement great  
13 weight to the extent that it opines on the claimant’s current level of functioning as of August 22,  
14 2012, but little weight to the extent that it provides no insight as to the claimant’s level of  
15 functioning as of December 10, 2005, [Mou’s] alleged onset date, or prior to December 31, 2008,  
16 her date last insured, and is therefore essentially irrelevant to this determination.” AR 22.  
17 Similarly, the ALJ partially discounted Dr. Mohammed’s testimony by according “great weight to  
18 the testimony of the impartial medical expert to the extent that it is consistent with the medical  
19 source statement of Dr. Chiu from August 22, 2012 to the date of the hearing,” but assigned “little  
20 weight to the opinion of the impartial medical expert to the extent that it extends prior to August  
21 of 2012 based on a single evaluation of the claimant in 2007 by Dr. Leith with no other supporting  
22 medical evidence.” *Id.* at 23. As detailed below, the Court finds the ALJ improperly failed to  
23 consider the retrospective aspects of the medical opinions of both Dr. Chiu and Dr. Mohammed by  
24 failing to provide clear and convincing evidence supported by substantial evidence that the  
25 retrospective aspects of these opinions should be rejected in this manner.

26 **1. Legal Standards for Opinions of Treating Physicians and Non-Examining**  
27 **Medical Experts**

28 “Cases in this circuit distinguish among the opinions of three types of physicians: (1) those

1 who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant  
2 (examining physicians); and (3) those who neither examine nor treat the claimant (nonexamining  
3 physicians).”<sup>7</sup> *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). “[T]he opinion of a treating  
4 physician is . . . entitled to greater weight than that of an examining physician, [and] the opinion of  
5 an examining physician is entitled to greater weight than that of a non-examining physician.”  
6 *Garrison*, 759 F.3d at 1012.

7 “To reject [the] uncontradicted opinion of a treating or examining doctor, an ALJ must  
8 state clear and convincing reasons that are supported by substantial evidence.” *Ryan v. Comm’r*  
9 *of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citations omitted). The Ninth Circuit has  
10 recently emphasized the high standard required for an ALJ to reject an opinion from a treating or  
11 examining doctor, even where the record includes a contradictory medical opinion:

12 “If a treating or examining doctor’s opinion is contradicted by  
13 another doctor’s opinion, an ALJ may only reject it by providing  
14 specific and legitimate reasons that are supported by substantial  
15 evidence.” *Id.* This is so because, even when contradicted, a  
16 treating or examining physician’s opinion is still owed deference  
17 and will often be “entitled to the greatest weight . . . even if it does  
18 not meet the test for controlling weight.” *Orn v. Astrue*, 495 F.3d  
19 625, 633 (9th Cir. 2007). An ALJ can satisfy the “substantial  
20 evidence” requirement by “setting out a detailed and thorough  
21 summary of the facts and conflicting clinical evidence, stating his  
22 interpretation thereof, and making findings.” *Reddick [v. Chater]*,  
23 157 F.3d 715, 725 (9th Cir. 1998). “The ALJ must do more than  
24 state conclusions. He must set forth his own interpretations and  
25 explain why they, rather than the doctors’, are correct.” *Id.* (citation  
26 omitted).

27 Where an ALJ does not explicitly reject a medical opinion or set  
28 forth specific, legitimate reasons for crediting one medical opinion  
over another, he errs. See *Nguyen v. Chater*, 100 F.3d 1462, 1464  
(9th Cir. 1996). In other words, an ALJ errs when he rejects a  
medical opinion or assigns it little weight while doing nothing more  
than ignoring it, asserting without explanation that another medical  
opinion is more persuasive, or criticizing it with boilerplate  
language that fails to offer a substantive basis for his conclusion. See  
*id.*

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<sup>7</sup> Psychologists’ opinions are subject to the same standards as physicians’ opinions. See 20 C.F.R. § 404.1527(a)(2); *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009) (applying standards discussing physicians’ opinions to evaluate an ALJ’s treatment of a psychologist’s opinion).

1 *Garrison*, 759 F.3d at 1012–13 (footnote omitted).

2 “The opinion of a nonexamining physician cannot by itself constitute substantial evidence  
3 that justified the rejection of the opinion of either an examining physician *or* a treating physician.”  
4 *Lester*, 81 F.3d at 831. Further, a “report of a non-examining, non-treating physician should be  
5 discounted and is not substantial evidence when contradicted by all other evidence in the record.”  
6 *Gallant*, 753 F.2d at 1454. However, in some cases a non-examining medical advisor’s testimony  
7 may be used, in part, to reject the opinion of an examining or treating physician. *See id.* at 831.  
8 “Opinions of a nonexamining, testifying medical advisor may serve as substantial evidence when  
9 they are supported by other evidence in the record and are consistent with it.” *Morgan v.*  
10 *Commissioner*, 169 F.3d 595, 600 (9th Cir. 1999).

11 Retrospective medical testimony may be considered where substantiated by medical  
12 evidence relevant to the period in question. *See Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir.  
13 1995). In considering retrospective opinions, “medical evaluations made after the expiration of a  
14 claimant’s insured status are relevant to an evaluation of the pre-expiration condition.” *Smith v.*  
15 *Bowen*, 849 F.2d 1222, 1225 (9th Cir. 1988). “Medical reports are inevitably rendered  
16 retrospectively and should not be disregarded solely on that basis.” *Id.* Further, given the  
17 continuity requirement for disability claims made after the expiration of insured status, “[t]he  
18 claimant may establish such continuous disabling severity by means of a retrospective diagnosis.”  
19 *Flaten v. Sec’y of Health & Human Servs.*, 44 F.3d 1453, 1461 (9th Cir. 1995). “For treating  
20 physicians who offer retrospective opinions on a claimant’s disability, an ALJ may reject the  
21 opinion only if she provides clear and convincing reasons that are supported by the record as a  
22 whole.” *See id.* at 1432 (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Cotton v.*  
23 *Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986)).

24 **2. The ALJ Erred in Failing to Credit Dr. Chiu’s Retrospective Testimony as**  
25 **Treating Psychologist**

26 As noted above, an ALJ must state clear and convincing reasons, supported by substantial  
27 evidence, to reject the uncontradicted opinion of a treating or examining doctor. *See Ryan*, 528  
28 F.3d at 1198. The ALJ failed to do this by using circular logic to color the record as contradicting

1 Dr. Chiu’s testimony and selectively failing to analyze the entire record. While Dr. Chiu specifies  
2 an onset date in 2012, as noted by the ALJ, her findings following a year of treatment with Mou  
3 directly tie the symptoms to 2005 when the King Library events occurred. These statements  
4 comparing the 2012 symptoms with these 2005 events are uncontradicted by the record, and the  
5 ALJ improperly found the statements to be irrelevant prior to 2012.

6 The ALJ’s minimization of Dr. Chiu’s medical statement is particularly notable where, as  
7 here, the medical opinions housed within Dr. Chiu’s statement are universally consistent with the  
8 record. While the ALJ states Dr. Chiu’s opinion “provides no insight as to the claimant’s level of  
9 functioning as of December 10, 2005, her alleged onset date, or prior to December 31, 2008, her  
10 date last insured, and is therefore essentially irrelevant to this determination,” *id.* at 22, the ALJ  
11 fails to support this rejection of the retrospective portions of this opinion with clear and  
12 convincing evidence supported by the record as a whole.

13 Although Dr. Chiu lists “August 22, 2012” as the alleged onset date in her Mental Medical  
14 Source Statement, Dr. Chiu also stated that Mou’s struggles with depression and panic attacks  
15 were responsible for and substantiated by her inability to work since 2005. *Id.* at 278–80. The  
16 ALJ failed to recognize the retrospective nature of several aspects of Dr. Chiu’s analysis in  
17 coming to her ultimate opinion. For example, in Dr. Chiu’s discussion of the impact of Mou’s  
18 symptoms on her ability to work and the explanations for findings of marked or moderate  
19 limitations to sustained concentration and persistence of understanding and memory, Dr. Chiu  
20 points to Mou’s inability to sustain or keep work since 2005 as a result of her symptoms. *Id.* at  
21 278–80. Similarly, Dr. Chiu stated that Mou “stopped working since 2005 as she struggles with  
22 symptoms of depression & panic attacks,” indicating that Dr. Chiu viewed Mou’s disability as  
23 continuously dating back to 2005. *See id.* at 278. Because Dr. Chiu’s statement discusses Mou’s  
24 symptoms throughout the years since the King Library incident as well as the role of depression  
25 and panic attacks in preventing Mou from working since 2005, the ALJ’s decision to find Dr.  
26 Chiu’s statement irrelevant to Mou’s symptoms during the relevant period was improper.

27 The ALJ determined that the retrospective aspects of Dr. Chiu’s opinion should be  
28 assigned little weight when they are “based on a single evaluation of the claimant in 2007 by Dr.

1 Leith with no other supporting objective medical evidence.” *Id.* at 23. However, this statement  
2 does not provide any reasons, clear and convincing or otherwise, as to why Dr. Leith’s testimony  
3 should be discounted in any fashion such that Dr. Chiu’s opinion, which was based in part on Dr.  
4 Leith’s statement, should be assigned little weight. Notwithstanding the ALJ’s discussion of  
5 Mou’s ability to take classes in college, go to movies, use public transportation, and other daily  
6 routines<sup>8</sup>, the ALJ does not identify anything in the medical or nonmedical record that contradicts  
7 Dr. Chiu’s assessment that Mou was unable to work following and as a result of the King Library  
8 events. In fact, Dr. Leith’s contemporaneous report and analysis of psychological tests made prior  
9 to Mou’s date last insured reveals a showing of major depressive disorder and inability to work as  
10 a result of these events. *See id.* at 20 (“The claimant was subjected to psychological testing during  
11 her evaluation, the results of which, Dr. Leith concludes, are consistent with a diagnosis of major  
12 depressive disorder.”), 342 (“Her complaints of depression and anxiety are supported by the  
13 results of psychological testing, and there is no evidence of symptom exaggeration or  
14 malingering.”). Dr. Chiu’s report includes retrospective diagnoses in that Dr. Chiu found the  
15 mental and emotional symptoms she detailed and personally witnessed from 2012 to 2013 were  
16 found to be consistent with and a continuation of symptoms arising in 2005. Because the ALJ  
17 fails to properly take into account the retrospective nature of Dr. Chiu’s uncontradicted medical  
18 opinion, the ALJ erred in stating it was “essentially irrelevant to this determination.” *Id.* at 22.

19 **3. The ALJ Erred in Failing to Credit Dr. Mohammed’s Retrospective**  
20 **Statements as Substantial Evidence**

21 Unlike Dr. Chiu, Dr. Mohammed did not treat or interview Mou, instead basing his  
22 medical opinions and testimony on his review of the record before the ALJ. *Id.* at 102–03. As  
23 detailed above, Dr. Mohammed ultimately concluded, based on his review of the record, that  
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25 <sup>8</sup> The impact of Mou’s daily routine on the ALJ’s analysis is discussed in more detail below with  
26 respect to the ALJ’s decision to find Mou only credible in part. As discussed below, Mou’s ability  
27 to attend classes and engage in certain social activities is not in itself grounds for discrediting  
28 Mou’s own discussion of her disability and symptoms. Further, in Dr. Leith’s statement, which  
discusses these activities at length, Dr. Leith concludes that Mou was unable to work despite her  
daily routine with classes and occasional social outings. AR 340.

1 Mou’s symptoms were present during the relevant period and that Mou could not work during that  
2 period. *Id.* at 108. However, much like the ALJ’s analysis of Dr. Chiu’s testimony, the ALJ  
3 “accord[ed] little weight to the opinion of the impartial medical expert to the extent that it extends  
4 prior to August of 2012 based on a single evaluation of the claimant in 2007 by Dr. Leith with no  
5 other supporting objective medical evidence.” *Id.* at 23.

6 While Dr. Mohammed was a non-treating medial expert, his testimony may still serve as  
7 substantial evidence where the rest of the record and medical evidence supports its findings. *See*  
8 *Morgan*, 169 F.3d at 600. Further, in the ALJ’s own analysis, he implicitly states that Dr.  
9 Mohammed’s testimony is not contradicted by either Dr. Chiu or Dr. Leith, assigning it great  
10 weight for its assessment in accordance with Dr. Chiu’s testimony regarding Mou’s symptoms  
11 after August 2012 and little weight for solely relying on Dr. Leith for the relevant period. AR 23.  
12 It is unclear on what grounds the ALJ finds Dr. Mohammed’s testimony suspect for relying on Dr.  
13 Leith’s own testimony, when the ALJ based his own evaluations on Dr. Leith’s report as well. *See*  
14 *Id.* at 23–24.

15 The ALJ largely emphasizes the daily activities Mou was able to perform during the  
16 relevant period to establish that Mou was not as disabled as she let on, while simultaneously  
17 ignoring or discrediting Mou’s own statements on the scope of her symptoms, her ex-husband  
18 Yang’s assessment of her disorders, the statements of Dr. Leith on her inability to work and  
19 depression, the results of psychological testing corroborating Dr. Leith’s testimony, Dr. Chiu’s  
20 analysis following a year of psychotherapy sessions, and Dr. Mohammed’s impartial review of the  
21 record as a whole. The ALJ fails to meet the clear and convincing standard for discrediting the  
22 retrospective aspects of Dr. Mohammed’s opinion in light of its consistency with the record as a  
23 whole.

24 **C. The ALJ Improperly Discredited Mou’s Testimony**

25 **1. Legal Standard for Credibility Evaluations**

26 “An ALJ engages in a two-step analysis to determine whether a claimant’s testimony  
27 regarding subjective pain or symptoms is credible.” *Garrison*, 759 F.3d at 1014. First, “the ALJ  
28 must determine whether a claimant has presented objective medical evidence of an underlying

1 impairment which could reasonably be expected to produce the pain or other symptoms alleged.”  
 2 *Id.* (internal citations omitted) (citing *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir.  
 3 2007)). For this first step, “the claimant is *not* required to show ‘that her impairment could  
 4 reasonably be expected to cause the severity of the symptom she has alleged; she need only show  
 5 that it could reasonably have caused some degree of the symptom.’” *Id.* (quoting *Smolen v.*  
 6 *Chater*, 80 F.3d 1273, 1282 (9th Cir. 2002)). “If the claimant satisfied the first step of this  
 7 analysis, and there is no evidence of malingering, ‘the ALJ can reject the claimant’s testimony  
 8 about the severity of her symptoms only by offering specific, clear and convincing reasons for  
 9 doing so.’” *Id.* (quoting *Smolen*, 80 F.3d at 1281).

10 An ALJ may consider a claimant’s daily functioning in assessing the credibility of a  
 11 claimant’s testimony. However, as part of this consideration, “evidence that [the claimant] could  
 12 assist with some household chores [is] not determinative of disability.” *Cooper v. Bown*, 815 F.2d  
 13 557, 561 (9th Cir. 1987). “Disability does not mean that a claimant must vegetate in a dark room  
 14 excluded from all forms of human and social activity.” *Id.* (quoting *Smith v. Califano*, 637 F.2d  
 15 968, 971 (3d Cir. 1981)). However, “the ALJ may discredit a claimant’s testimony when the  
 16 claimant reports participation in everyday activities indicating capacities that are transferable to a  
 17 work setting.” *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012). “Even where those  
 18 activities suggest some difficulty functioning, they may be grounds for discrediting the claimant’s  
 19 testimony to the extent that they contradict claims of a totally debilitating impairment.” *Id.*

20 **2. The ALJ Improperly Assigned Only Partial Credibility to Mou**

21 The ALJ concluded that “the claimant’s medically determinable impairments could  
 22 reasonably be expected to cause the alleged symptoms; however, the claimant’s statements  
 23 concerning the intensity, persistence and limiting effects of these symptoms are not entirely  
 24 credible for the reasons explained in this decision.” AR 18. The ALJ explained that “the lack of  
 25 objective clinical and diagnostic findings supporting the claimant’s allegations prior to her date  
 26 last insured and her capacity to handle the rigors of a full class schedule in paralegal studies leaves  
 27 the undersigned unable to accord more than partial credibility to the claimant.” *Id.* The ALJ also  
 28 pointed to Dr. Leith’s recommendations of antidepressants and psychotherapy, along with Mou’s

1 failure to follow these recommendations, as further support of assigning only partial credibility to  
2 Mou, despite his acknowledgment that Mou’s failure to promptly seek further treatment “may, at  
3 least in part, be due to cultural factors.” *See id.* The evidence in this record shows no signs of  
4 malingering or exaggeration to warrant such a finding.

5 With respect to the objective medical evidence on record, Dr. Leith, Dr. Chiu, and Dr.  
6 Mohammed all indicated that there was no sign of malingering or exaggeration of symptoms on  
7 the part of Mou, that Mou’s symptoms were indicative of depression and/or anxiety, and that Mou  
8 was unable to work in the relevant period. *Id.* at 108, 278–80, 342. Mou’s own statements are in  
9 conformity with this and her discussion of daily activities does not contradict these findings or  
10 lead to a proper discrediting of Mou’s testimony. Each of these doctors evaluated Mou’s  
11 disabilities in relation to her level of functioning between 2005 and 2008, while taking into  
12 account Mou’s activities, and found that despite her educational and social activities, she was  
13 disabled and unable to work during this time period.

14 With respect to Mou’s daily activities between 2005 and 2008—such as using public  
15 transportation, going to movies, and attending classes—the Court finds this evidence insufficient  
16 to discredit Mou’s testimony as to her symptoms because these activities have a tenuous  
17 connection with her ability to keep and hold a job on the national or local market as well as  
18 depression and anxiety generally. While the ability to go to paralegal studies, take public  
19 transportation, and attend occasional social outings could weigh against findings of disabling  
20 depressive or anxiety disorders insofar as such activities show that Mou was able to perform  
21 certain social functions, the ALJ fails to establish that this amounts to a clear and convincing basis  
22 for discrediting Mou’s testimony, particularly in light of the rest of the record—including medical  
23 opinion evidence—indicating that Mou symptoms were severe enough to prevent her from  
24 working notwithstanding her paralegal classes and daily activities.

25 The ALJ’s justification for discrediting Mou’s testimony based on her failure to take  
26 antidepressants or psychotherapy sessions is not persuasive. At the time Dr. Chiu wrote her  
27 mental medical source statement detailing Mou’s still-present depression and anxiety symptoms,  
28 Mou had taken ten months of weekly supportive therapy sessions with Dr. Chiu as well as trying

1 antidepressants. *See id.* at 278. There is nothing in Dr. Chiu’s statement, or individual notes on  
2 therapy sessions, to indicate that Mou was no longer depressed or anxious following these therapy  
3 sessions.<sup>9</sup> *See id.* at 278–81; 283–311. In fact, Dr. Chiu’s ultimate conclusion that Mou was  
4 disabled by depression and anxiety after August 2012 postdated Mou’s use of these treatment  
5 methods suggested by Dr. Leith. The Court therefore rejects the Commissioner’s argument that  
6 Mou is ineligible for benefits on the grounds that “failure to follow prescribed treatment that can  
7 restore an individual’s ability to work without a good reason precludes the award of disability  
8 benefits.” *See* Def.’s Mot. at 9. The record in this case does not indicate that the proposed  
9 treatments at issue “can restore [Mou’s] ability to work,” because Mou actually engaged in those  
10 treatments later without success. Similarly, the Court finds the ALJ erred by finding Mou’s failure  
11 to promptly seek treatment undermined her credibility. Given that the ALJ acknowledged the  
12 cultural reasons behind Mou’s initial failure to seek treatment, the ALJ has not identified clear and  
13 convincing reasons why Mou’s failure to seek treatment earlier would weigh against the  
14 credibility of her testimony in this case. *See* AR 18.

15 Mou’s testimony and description of her symptoms is consistent with the testimony and  
16 medical opinions of Dr. Leith, Dr. Chiu, and Dr. Mohammed, psychological testing taken during  
17 the relevant period, her ex-husband Yang’s description of her functioning, and the record as a  
18 whole. The ALJ improperly emphasized Mou’s ability to perform certain daily and social  
19 activities (which are not inherently indicative of an ability to work) and failure to obtain further  
20 medical treatment between 2008 and 2012 (which the ALJ acknowledged to be in-part the result  
21 of cultural as opposed to medical factors) to find Mou only partially credible in her discussion as  
22 to the severity of her symptoms following the King Library events. The ALJ fails to present clear  
23 and convincing reasons for discrediting Mou’s testimony.

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27 <sup>9</sup> Dr. Chiu does make several notes throughout his sessions with Mou, as well as on his mental  
28 medical source statement, that she has practiced techniques with Mou to help her alleviate her  
symptoms. *See e.g. id.* at 278 (client is “learning skills learned in session, however, she has some  
difficulty in practice mindfulness skills”).

1           **D. The Commissioner’s Other Arguments Fail as Outside the Scope of the ALJ’s Reasoning**

2           In considering the ALJ’s decision regarding Mou’s disability claims, this Court may  
3 “review only the reasons provided by the ALJ in the disability determination and may not affirm  
4 the ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.  
5 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)). Even if arguments put  
6 forth by parties could be adequate grounds for reversal, courts “are constrained to review the  
7 reasons the ALJ asserts.” *Connett*, 340 F.3d at 874. A court cannot, for example, “affirm the  
8 ALJ’s credibility decision based on evidence that the ALJ did not discuss.” *Id.*

9           The Commissioner begins her summary judgment motion with a discussion of the relevant  
10 period of disability that Mou must establish and an argument that Mou’s claim is untimely. *See*  
11 *Def.’s Mot.* at 1–2. The Commissioner contends that “the earliest date a Plaintiff can receive  
12 [disability insurance benefits] is no earlier than the seventeenth month preceding the month in  
13 which she applied,” and thus, “the earliest date [Mou] would have been eligible to receive  
14 [disability insurance benefits], if she could have established disability would have been August  
15 2010.” *Id.* at 2 (citing 20 C.F.R. § 404.315(a)(4)). The Commissioner further contends that Mou  
16 “must also prove the current disability, if any, has existed *continuously* since a date on or before  
17 the date her insurance coverage lapsed to within 14 months of the date of application for Title II  
18 disability benefits.” *Id.*

19           This Court’s analysis here is constrained to reviewing the reasoning set forth by the ALJ.  
20 Because the ALJ focused his analysis on Mou’s alleged disabilities prior to her date last insured,  
21 and did not consider the potential lapse of Mou’s claims after her date last insured as grounds for  
22 denial, this Court cannot now affirm the ALJ’s decision on these alternate grounds and declines to  
23 address this argument.

24           **E. Further Administrative Proceedings Are Warranted**

25           Mou contends that this case should be remanded for an award of benefits. As discussed  
26 below, however, the Court finds that further administrative proceedings are necessary.

27           If an ALJ has improperly failed to credit medical opinion evidence or claimant testimony,  
28 a district court must credit that testimony as true and remand for an award of benefits provided

1 that three conditions are satisfied:

2 (1) the record has been fully developed and further administrative  
3 proceedings would serve no useful purpose; (2) the ALJ has failed to  
4 provide legally sufficient reasons for rejecting evidence, whether  
5 claimant testimony or medical opinion; and (3) if the improperly  
6 discredited evidence were credited as true, the ALJ would be  
7 required to find the claimant disabled on remand.

8 *Garrison*, 759 F.3d at 1020. Under such circumstances, a court should not remand for further  
9 administrative proceedings to reassess credibility. *See id.* at 1019–21. This “credit-as-true” rule,  
10 which is “settled” in the Ninth Circuit, *id.* at 999, is intended to encourage careful analysis by  
11 ALJs, avoid duplicative hearings and burden, and reduce delay and uncertainty facing claimants,  
12 many of whom “suffer from painful and debilitating conditions, as well as severe economic  
13 hardship.” *Id.* at 1019 (quoting *Varney v. Sec’y of Health & Human Servs.*, 859 F.2d 1396,  
14 1398–99 (9th Cir. 1988)).

15 A court may remand for further proceedings, however, “when the record as a whole creates  
16 serious doubt as to whether the claimant is, in fact, disabled within the meaning of the Social  
17 Security Act.” *Id.* at 1021. A court may also remand for the limited purpose of determining when  
18 a claimant’s disability began if that date is not clear from the credited-as-true opinion. *See House*  
19 *v. Colvin*, 583 F. App’x 628, 629–30 (9th Cir. 2014) (citing, *e.g.*, *Luna v. Astrue*, 623 F.3d 1032,  
20 1035 (9th Cir. 2010)). Outside of those circumstances, remand for further proceedings is an abuse  
21 of discretion if the credit-as-true rule establishes that a claimant is disabled. *Garrison*, 759 F.3d at  
22 1020.

23 In this case, if nothing else, the Commissioner’s argument regarding the timeliness of  
24 Mou’s claim creates serious doubt as to whether she is entitled to benefits, and should be  
25 addressed through the administrative process in the first instance. *See Def.’s Mot.* at 1–3; 20  
26 C.F.R. § 404.315. The Court remands for further administrative proceedings to allow the  
27 Commissioner to consider that issue as well as to reconsider whether Mou was disabled during the  
28 relevant period after properly crediting Mou’s testimony, Dr. Mohammed’s retrospective medical  
statements as a non-treating medical expert, and Dr. Chiu’s retrospective statements as a treating  
physician.

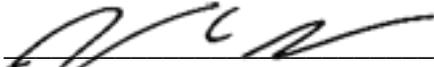
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**IV. CONCLUSION**

The Court finds the ALJ erred in weighing the medical opinions of Dr. Chiu or Dr. Mohammed as “essentially irrelevant” to Mou’s conditions during the relevant period given their retrospective nature and consistency with the record as a whole. The ALJ also erred by improperly discrediting the testimony and statements made by Mou given no evidence of malingering or exaggeration in medical statements and testing as well as the consistency between Mou’s testimony and the record as a whole, including medical opinions put forth by Dr. Leith, Dr. Chiu, and Dr. Mohammed. The ALJ failed to present clear and convincing reasons supported by substantial evidence for rejecting that evidence. For the foregoing reasons, the Court GRANTS Mou’s Motion for Summary Judgment and REMANDS this case for further administrative proceedings consistent with this order.

**IT IS SO ORDERED.**

Dated: March 30, 2017

  
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JOSEPH C. SPERO  
Chief Magistrate Judge