

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EVA M. TUDINO,)	Case No. 06-CV-2487-BEN (JMA)
)	
Plaintiff,)	ORDER ADOPTING REPORT AND
)	RECOMMENDATION AND
v.)	GRANTING IN PART AND DENYING
)	IN PART PARTIES’ MOTIONS FOR
JO ANNE B. BARNHART, Commissioner of)	SUMMARY JUDGMENT
Social Security,)	
)	[Docket Nos. 12, 16, 21]
Defendant.)	
_____)	

Plaintiff Eva M. Tudino seeks judicial review of the Commissioner’s decision to deny Tudino disability benefits and supplemental security income. Cross motions have been filed. The Honorable Jan M. Adler has issued a Report and Recommendation (“Report”), recommending that Plaintiff’s Motion for Summary Judgment be **DENIED** in part and **GRANTED** in part, and that Defendant’s cross-motion for summary judgment be **DENIED** in part and **GRANTED** in part.

Specifically, Judge Adler found that two of the ALJ’s six findings were insufficient to discredit Plaintiff’s objective complaints, but that the ALJ otherwise articulated clear and convincing reasons for his findings. Additionally, Judge Adler found that the ALJ erred by not inquiring into whether the Vocational Expert’s testimony conflicted with the Dictionary of the Occupational Titles. Furthermore, the Report concluded that the ALJ did not err in discounting

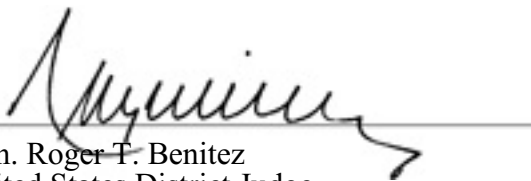
1 Plaintiff's subjective complaints. Objections to the Report were due on or before August 25,
2 2008. To date, no objections have been filed.

3 The Court's role in reviewing the Report is set forth in 28 U.S.C. § 636(b)(1). Under this
4 statute, the Court "shall make a *de novo* determination of those portions of the report . . . to
5 which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or
6 recommendations made by the magistrate [judge]." *Id.*; *see also U.S. v. Reyna-Tapia*, 328 F.3d
7 1114, 1121 (9th Cir. 2003) ("The statute makes it clear that the district judge must review the
8 magistrate judge's findings and recommendations *de novo* if objection is made, but not
9 otherwise. Neither the Constitution nor the statute requires a district judge to review, *de novo*,
10 findings and recommendations that the parties themselves accept as correct.").

11 Notwithstanding, the Court has made a *de novo* review of the Report and agrees with
12 Judge Adler's reasoning and conclusions. *See* 28 U.S.C. § 636(b). Thus, Judge Adler's Report
13 is **ADOPTED** in full. For the reasons stated in the Report, Plaintiff's motion for summary
14 judgment is **DENIED** in part and **GRANTED** in part, and Defendant's cross-motion for
15 summary judgment is **DENIED** in part and **GRANTED** in part. The case is remanded for
16 further proceedings.

17 **SO ORDERED.**

18
19 DATED: September 5, 2008

20
21 
22 Hon. Roger T. Benitez
23 United States District Judge
24
25
26
27
28