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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CECILIA CONTRERAS-MENDEZ,

Plaintiff,

v.

NANCY A. BERRYHILL, Deputy
Commissioner of Social Security for
Operations,

Defendant.

CASE NO. 3:17-CV-05666-JRC

ORDER ON PLAINTIFF'S
COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Consent to Proceed Before a United States Magistrate Judge, Dkt. 5). This matter has been fully briefed. *See* Dkt. 12, 18, 19.

After considering and reviewing the record, the Court concludes that the Administrative Law Judge (“ALJ”) erred in in failing to credit fully the medical opinion from examining psychologist, Tobias A. Ryan, Psy.D. Although the ALJ found that Dr. Ryan’s opinion was based on plaintiff’s self-reports and not supported by any clinical findings, the ALJ’s finding is not supported by substantial evidence as the record reflects

1 that Dr. Ryan conducted a mental status examination, clinical interview, and disability
2 assessment, which all lend support to Dr. Ryan’s opined limitations.

3 Since the ALJ’s error is not harmless, this matter is reversed and remanded
4 pursuant to sentence four of 42 U.S.C. § 405(g) to the Acting Commissioner of Social
5 Security (“Commissioner”) for further proceedings consistent with this Order. Because
6 the ALJ's error relating to Dr. Ryan’s opinion affects the entire proceedings and plaintiff
7 will be able to present new evidence and new testimony on remand, the ALJ must re-
8 evaluate all of the medical evidence, reassess plaintiff’s testimony, the RFC, and the
9 findings at steps four and five, as necessary.
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11 BACKGROUND

12 Plaintiff, CECILIA CONTRERAS-MENDEZ, was born in 1986 and was 22 years
13 old on the alleged date of disability onset of September 20, 2008. *See* AR. 167. Plaintiff
14 completed one year of college in 2012. AR. 267. Plaintiff has worked as a customer
15 service worker, sales representative/assistant, student coordinator, and a teacher’s aide.
16 AR. 195. Plaintiff stopped working at her most recent job with Clark County College
17 because the school year ended. AR. 194-95, 267.

18 According to the ALJ, plaintiff has at least the severe impairments of ulcerative
19 colitis; Crohn’s disease; esophagitis; depression; post-traumatic stress disorder (“PTSD”);
20 asthma; fibromyalgia; and chronic back pain. AR. 28 (citing 20 C.F.R. § 416.920(c)).
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22 At the time of the hearing, plaintiff was living in an apartment with her ten-year-
23 old son. AR. 56.
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1 Plaintiff argues that the ALJ erred in evaluating the medical opinions of Tobias A.
2 Ryan, Psy.D., David T. Morgan, Ph.D., Norman Staley, M.D., Robert Hoskins, M.D.,
3 Vincent Gollogly, Ph.D., Eugene Kester, M.D., Heather Nash, FNP-C, Krista
4 Cooperstein PA-C, and that other medical evidence is consistent with these opinions and
5 plaintiff's testimony. Dkt. 12.

6 A. Dr. Ryan

7 On November 13, 2012, examining psychologist, Tobias A. Ryan, Psy.D.,
8 diagnosed plaintiff with major depressive disorder, current episode unspecified, and rated
9 her GAF at 50. AR. 1085. Dr. Ryan found that plaintiff's ability to reason, interact, and
10 adapt were limited. AR. 1086. Dr. Ryan opined that plaintiff was moderately to severely
11 impaired in her ability to maintain a daily/weekly work schedule. AR. 1085. Dr. Ryan
12 opined that plaintiff was moderately impaired in her ability to perform detailed or
13 complex tasks without special or repeated instructions and mildly impaired in her ability
14 to perform simple or repetitive work type tasks. AR. 1085. Dr. Ryan opined that plaintiff
15 was mildly impaired in her ability to accept instructions from supervisors and interacting
16 with co-workers and/or the public. AR. 1085.

17 The ALJ gave significant weight to Dr. Ryan's opinion that plaintiff is moderately
18 impaired in her ability to perform detailed task and mildly impaired in her ability to
19 perform simple tasks. AR. 43. The ALJ gave limited weight to Dr. Ryan's opinion that
20 plaintiff has moderate to severe limitations in her ability to maintain a regular work
21 schedule reasoning that Dr. Ryan's assessment was based largely on plaintiff's self-
22 reports and lacked corroborating evidence. AR. 43.
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1 The Court notes that plaintiff only challenges the ALJ’s assignment of limited
2 weight to Dr. Ryan’s opinion that plaintiff is moderately to severely impaired in her
3 ability to maintain a daily/weekly work schedule, and does not challenge the ALJ’s
4 evaluation of Dr. Ryan’s opinion related to plaintiff’s GAF score or her mild to moderate
5 limitations. *See* Dkt. 12.

6 The ALJ found that Dr. Ryan did not support the opined limitations with objective
7 evidence and relied largely on plaintiff’s self-reports. AR. 43. An ALJ need not accept
8 the opinion of a treating physician, “if that opinion is brief, conclusory, and inadequately
9 supported by clinical findings” or “by the record as a whole.” *Batson v. Comm’r of Soc.*
10 *Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). And, “[an] ALJ may reject a treating
11 physician’s opinion if it is based ‘to a large extent’ on a claimant’s self-reports that have
12 been properly discounted as incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th
13 Cir. 2008) (quoting *Morgan v. Comm’r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir.
14 1999) (citing *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989)).

15 This situation is distinguishable from one in which the doctor describes his or her
16 own observations in support of the assessments and opinions. *See Ryan v. Comm’r Soc.*
17 *Sec. Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008) (“an ALJ does not provide clear
18 and convincing reasons for rejecting an examining physician’s opinion by questioning the
19 credibility of the patient’s complaints where the doctor does not discredit those
20 complaints and supports his ultimate opinion with his own observations”); *see also*
21 *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001). According to the Ninth
22 Circuit, “when an opinion is not more heavily based on a patient’s self-reports than on
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1 clinical observations, there is no evidentiary basis for rejecting the opinion.” *Ghanim v.*
2 *Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (citing *Ryan*, 528 F.3d at 1199-1200).

3 The Ninth Circuit clarified that professional assessment of mental illness is
4 different from professional assessment of physical illness, and observed that psychiatric
5 evaluations necessarily analyze a patient’s self-reports:

6 [A]s two other circuits have acknowledged, “[t]he report of a psychiatrist
7 should not be rejected simply because of the relative imprecision of the
8 psychiatric methodology.” . . . Psychiatric evaluations may appear
9 subjective, especially compared to evaluation in other medical fields.
10 Diagnoses will always depend in part on the patient's self-report, as well as
11 on the clinician's observations of the patient. But such is the nature of
psychiatry. . . . Thus, the rule allowing an ALJ to reject opinions based on
self-reports does not apply in the same manner to opinions regarding mental
illness.

12 *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) (quoting *Blankenship v. Bowen*,
13 874 F.2d 1116, 1121 (6th Cir. 1989) (internal citations omitted)). Thus, “when mental
14 illness is the basis of a disability claim, clinical [findings] may consist of the diagnoses
15 and observations of professionals trained in the field of psychopathology.” *Sanchez v.*
16 *Apfel*, 85 F.Supp.2d 986, 992 (C.D. Cal. 2000); *see also Sprague v. Bowen*, 812 F.2d
17 1226, 1232 (9th Cir. 1987) (an opinion based on clinical observations supporting a
18 diagnosis of depression is competent [psychiatric] evidence). Both a clinical interview
19 and a mental status examination are “objective measures” that “cannot be discounted as a
20 ‘self-report.’ ” *Buck*, 869 F.3d at 1049 (9th Cir. 2017) (finding a clinical interview and
21 mental status evaluation to be “objective measures” that “cannot be discounted as a ‘self-
22 report’”).
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1 Here, Dr. Ryan performed a mental status examination (“MSE”) listing a number
2 of results. For example, Dr. Ryan found that plaintiff’s mood was depressed, and her
3 affect was labile, but congruent. AR. 1081. Dr. Ryan reported that plaintiff’s answers to
4 interview questions indicated limited adaptability, insight, and judgment. AR 1082. Dr.
5 Ryan found that plaintiff’s abstract thinking was limited, and that she struggled to find
6 the common link between two familiar objects and interpret familiar and unfamiliar
7 objects, which may indicate problems generalizing creatively to new situations. AR.
8 1082. The Court notes that “experienced clinicians attend to detail and subtlety in
9 behavior, such as the affect accompanying thought or ideas, the significance of gesture or
10 mannerism, and the unspoken message of conversation. The Mental Status Examination
11 allows the organization, completion and communication of these observations.” Paula T.
12 Trzepacz and Robert W. Baker, *The Psychiatric Mental Status Examination 3* (Oxford
13 University Press 1993). “Like the physical examination, the Mental Status Examination is
14 termed the *objective* portion of the patient evaluation.” *Id.* at 4 (emphasis in original).

16 The MSE is conducted by medical professionals skilled and experienced in
17 psychology and mental health. Although “anyone can have a conversation with a patient,
18 [] appropriate knowledge, vocabulary and skills can elevate the clinician’s ‘conversation’
19 to a ‘mental status examination.’” Trzepacz and Baker, *supra*, *The Psychiatric Mental*
20 *Status Examination 3*. A mental health professional is trained to observe patients for signs
21 of their mental health not rendered obvious by the patient’s subjective reports, in part
22 because the patient’s self-reported history is “biased by their understanding, experiences,
23 intellect and personality” (*id.* at 4), and, in part, because it is not uncommon for a person
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1 suffering from a mental illness to be unaware that her “condition reflects a potentially
2 serious mental illness.” *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996) (citation
3 omitted).

4 Dr. Ryan also administered the World Health Organization Disability Assessment
5 Schedule 2.0 (“WHODAS”). AR. 1082. Dr. Ryan found that plaintiff’s scores indicate a
6 severe level of difficulty in fulfilling household responsibilities and completing
7 household tasks, and overall severe level of difficulty with participation in society,
8 including participating in community activities or doing things by herself for pleasure or
9 relaxation. AR. 1082-83. Dr. Ryan found that plaintiff’s scores also indicated an extreme
10 level of difficulty with work-related activities. AR. 1083.

12 In addition, Dr. Ryan reported his own observations in support of his assessment
13 and opinion. *See Ryan*, 528 F.3d at 1199-1200. He observed that plaintiff showed signs of
14 negative thoughts, low self-worth, labile affect, and low mood. AR. 1081, 1084. No part
15 of Dr. Ryan’s evaluation questioned or discredited plaintiff’s reports. *See* AR. 1081-
16 1086.

17 Defendant points to inconsistencies between plaintiff’s reports to Dr. Ryan and
18 other evidence in the record. Dkt. 18 at 11-12. However, the ALJ did not state that he was
19 rejecting Dr. Ryan’s opinion on this basis. AR. 43. The Court may draw reasonable
20 inferences from the ALJ’s opinion, but cannot consider defendant’s *post hoc*
21 rationalizations about what the ALJ considered. *See Magallanes v. Bowen*, 881 F.2d 747,
22 775 (9th Cir. 1989). According to the Ninth Circuit, “[l]ong-standing principles of
23 administrative law require us to review the ALJ’s decision based on the reasoning and
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1 actual findings offered by the ALJ - - not *post hoc* rationalizations that attempt to intuit
2 what the adjudicator may *Molina v. Astrue*, 674 F.3d 1104, 1121 (9th Cir. 2012) (“we
3 may not uphold an agency’s decision on a ground not actually relied on by the agency”)
4 (citing *Chenery Corp*, 332 U.S. at 196).

5 In conclusion, Dr. Ryan based his opinion on objective measures which are
6 consistent with his findings. *See Buck*, 869 F.3d at 1049 (internal citations omitted); *See*
7 *Garrison*, 759 F.3d at 1014 n.17. The ALJ committed legal error by discounting Dr.
8 Ryan’s opinion related to plaintiff’s ability to maintain a daily/weekly schedule due to a
9 supposed lack of clinical findings as well as a purportedly problematic reliance on
10 plaintiff’s self-reports. The ALJ’s reasoning was not based on substantial evidence. *See*
11 *Lester*, 81 F.3d at 830-31 (when an examining physician’s opinion is contradicted, that
12 opinion can be rejected “for specific and legitimate reasons that are supported by
13 substantial evidence in the record”).

14
15 The Ninth Circuit has “recognized that harmless error principles apply in the
16 Social Security Act context.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
17 (citing *Stout*, 454 F.3d at 1054 (collecting cases)). The Ninth Circuit has reaffirmed the
18 explanation in *Stout* that “ALJ errors in social security are harmless if they are
19 ‘inconsequential to the ultimate nondisability determination’ and that ‘a reviewing court
20 cannot consider [an] error harmless unless it can confidently conclude that no reasonable
21 ALJ, when fully crediting the testimony, could have reached a different disability
22 determination.’” *Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015) (citing *Stout*, 454
23 F.3d at 1055-56).
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1 In *Marsh*, even though “the district court gave persuasive reasons to determine
2 harmless,” the Ninth Circuit reversed and remanded for further administrative
3 proceedings, noting that “the decision on disability rests with the ALJ and the
4 Commissioner of the Social Security Administration in the first instance, not with a
5 district court.” *Id.* (citing 20 C.F.R. § 404.1527(d)(1)-(3)).

6 As noted, Dr. Ryan opined that plaintiff had marked to severe limitations in her
7 ability to maintain a daily/weekly work schedule. AR 1085. As fully crediting this
8 opinion likely would alter the ultimate disability determination, the Court cannot
9 conclude with confidence “ ‘that no reasonable ALJ, when fully crediting the testimony,
10 could have reached a different disability determination.’ ” *See Marsh*, 792 F.3d at 1173
11 (citing *Stout*, 454 F.3d at 1055-56). Therefore, the ALJ’s error is not harmless and this
12 matter is reversed and remanded for further administrative proceedings.

14 B. Drs. Gollogly, Staley, Kester, Hoskins, and Morgan, Ms. Cooperstein, Ms.
15 Nash, and other medical evidence

16 In Section I.A., the Court concludes that the ALJ committed harmful error in
17 assessing the opinion of Dr. Ryan, and that this case be remanded for further
18 administrative proceedings. In light of this finding, and because plaintiff will be able to
19 present new evidence and new testimony on remand, the ALJ’s assessment of all of the
20 medical evidence should be evaluated anew following remand of this matter. *See*
21 Program Operations Manual System (POMS), GN 03106.036 *Court Remand Orders*,
22 <https://secure.ssa.gov/poms.nsf/lnx/0203106036> (last visited September 12, 2018) (“[A]
23 court order vacating the [ALJ’s] prior decision and remanding the case to the
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1 Commissioner voids the prior decision ... and thus returns the case to the status of a claim
2 “pending” before SSA....The ALJ processes the case in the same way as a regular
3 hearing and issues a decision.”); *see also Bartlett v. Berryhill*, 2017 WL 2464117, at *4
4 (W.D. Wash. June 7, 2017).

5 (2) Did the ALJ fail to properly evaluate plaintiff’s testimony?

6 Similarly, the evaluation of a claimant’s statements regarding limitations relies in
7 part on the assessment of the medical evidence. *See* 20 C.F.R. § 404.1529(c); SSR 16-3p,
8 2016 SSR LEXIS 4. Therefore, plaintiff’s testimony and statements should be assessed
9 anew following remand of this matter.

10 (3) Did the ALJ err in his assessment of plaintiff’s RFC and the findings at steps
11 four and five?

12 Again, on remand, the ALJ must also reassess plaintiff’s RFC. *See* Social Security
13 Ruling 96-8p (“The RFC assessment must always consider and address medical source
14 opinions.”); *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009)
15 (“an RFC that fails to take into account a claimant’s limitations is defective”). Because
16 the ALJ must reassess plaintiff’s RFC on remand, he must also re-evaluate the findings at
17 steps four and five to determine if plaintiff can perform her past relevant work or if there
18 are jobs existing in significant numbers in the national economy that plaintiff can perform
19 in light of the new RFC. *See Watson v. Astrue*, 2010 WL 4269545, *5 (C.D. Cal. Oct. 22,
20 2010) (finding the ALJ’s RFC determination and hypothetical questions posed to the
21 vocational expert defective when the ALJ did not properly consider a doctor’s findings).
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1 (4) Should this case be remanded for an award of benefits or remanded for
2 further administrative proceedings?

3 Plaintiff contends that this case should be remanded for an award of benefits, or in
4 the alternative, remanded for further administrative proceedings. Dkt. 12 at 18-20.

5 Generally, when the Social Security Administration does not determine a
6 claimant's application properly, "the proper course, except in rare circumstances, is to
7 remand to the agency for additional investigation or explanation." *Benecke v. Barnhart*,
8 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted). However, the Ninth Circuit has put
9 forth a "test for determining when [improperly rejected] evidence should be credited and
10 an immediate award of benefits directed." *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th
11 Cir. 2000) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996)).

12 At the first step, the court should determine if "the ALJ has failed to provide
13 legally sufficient reasons for rejecting [the particular] evidence." *Smolen*, 80 F.3d at 1292
14 (citations omitted). The Court has done so here.

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16 Next, as stated recently by the Ninth Circuit:

17 Second, we turn to the question whether [or not] further administrative
18 proceedings would be useful. In evaluating this issue, we consider [if] the
19 record as a whole is free from conflicts, ambiguities, or gaps, [if] all
factual issues have been resolved, and [if] the claimant's entitlement to
benefits is clear under the applicable legal rules.

20 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014)
21 (citations omitted).

22 Here, the record as a whole is not free from conflicts and ambiguities, including
23 conflicts in the medical evidence and allegations potentially inconsistent with aspects of
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1 the record. *See e.g.* AR. 93, 110, 1085 (Dr. Ryan opined that plaintiff has moderate to
2 severe limitations in her ability to maintain a daily/weekly work schedule, while state
3 agency reviewing psychological consultants, Drs. Gollogly and Kester, opined that
4 plaintiff was only moderately limited in her ability to perform activities within a
5 schedule, maintain regular attendance, and be punctual within customary tolerances.).
6 Therefore, remand for further administrative proceedings is appropriate. *See Treichler v.*
7 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1105 (9th Cir. 2014) (citations omitted)
8 (reversal with a direction to award benefits is inappropriate if further administrative
9 proceedings would serve a useful purpose).

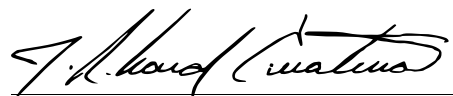
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11 On remand, the ALJ is instructed to (1) reconsider all of the medical and non-
12 medical evidence; (2) reassess plaintiff’s subjective symptom testimony concerning
13 plaintiff’s limitations in light of any new and reconsidered evidence; and (3) re-evaluate
14 plaintiff’s RFC and findings at steps four and five, if necessary.

15 CONCLUSION

16 Based on these reasons and the relevant record, the Court **ORDERS** that this
17 matter be **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. §
18 405(g) to the Acting Commissioner for further consideration consistent with this order.

19 **JUDGMENT** should be for plaintiff and the case should be closed.

20 Dated this 26th day of September, 2018.

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23 J. Richard Creatura
24 United States Magistrate Judge