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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

|                        |   |                        |
|------------------------|---|------------------------|
| VALENCIA SMALL,        | ) | No. CV 10-02685-VBK    |
|                        | ) |                        |
| Plaintiff,             | ) | MEMORANDUM OPINION     |
|                        | ) | AND ORDER              |
| v.                     | ) |                        |
|                        | ) | (Social Security Case) |
| MICHAEL J. ASTRUE,     | ) |                        |
| Commissioner of Social | ) |                        |
| Security,              | ) |                        |
|                        | ) |                        |
| Defendant.             | ) |                        |
| _____                  | ) |                        |

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:

1. Whether the Administrative Law Judge ("ALJ") properly

1 considered Plaintiff's mental impairment and limitations (JS  
2 at 6); and

- 3 2. Whether the ALJ properly found Plaintiff could perform a  
4 significant number of jobs as required in competitive  
5 employment (JS at 25).  
6

7 This Memorandum Opinion will constitute the Court's findings of  
8 fact and conclusions of law. After reviewing the matter, the Court  
9 concludes that the decision of the Commissioner must be affirmed.  
10

11 I

12 **THE ALJ PROPERLY CONSIDERED PLAINTIFF'S**  
13 **MENTAL IMPAIRMENT AND LIMITATIONS**

14 Plaintiff asserts that she has been diagnosed with paranoid  
15 schizophrenia by her treating psychiatrist, Dr. Puglisi. Relying upon  
16 functional assessments made by Dr. Puglisi at two different times in  
17 2008 (AT 240-47, 281-86), she asserts that her impairments fulfill the  
18 requirements of Listing 12.03, parts A and B. For the reasons to be  
19 set forth, the Court agrees that the ALJ properly concluded that  
20 Plaintiff does not meet a Listing, nor is she disabled due to any  
21 mental impairment.  
22

23 **A. The ALJ's Decision.**

24 Following a hearing which occurred on December 1, 2008 (AR 28-  
25 70), at which Plaintiff was represented by the same attorney who now  
26 represents her in this litigation, and at which testimony was taken  
27 both from Plaintiff and a Medical Expert ("ME"), the ALJ issued an  
28 unfavorable decision. (AR 10-23.) In that decision, the ALJ

1 summarized the evidence concerning Plaintiff's mental impairment.

2 First, the ALJ noted that on May 18, 2007, at the request of the  
3 Department of Social Services, Plaintiff received a complete  
4 psychiatric evaluation ("CE") from Dr. Simonian. (AR 16-17, 208-12.)  
5 Dr. Simonian took a history from Plaintiff, who indicated that she has  
6 been hearing voices, for which she is on medication, for about four or  
7 five months. Plaintiff started seeing a psychiatrist three months  
8 ago, and is going to Augusta Hawkins Hospital where she is receiving  
9 medication for her psychiatric condition. (AR 16, 209.) Dr. Simonian  
10 performed a mental status examination (AR 210-11), which revealed no  
11 major disorder of speech; generally coherent thought processes; full  
12 range and appropriate affect; slightly guarded mood; no delusional  
13 thinking. (AR 210.) Dr. Simonian concluded, however, that Plaintiff  
14 was able to comprehend questions and respond to them appropriately,  
15 but at times "she was selectively not giving answers to questions."  
16 (Id.) Dr. Simonian felt that Plaintiff was "generally evasive to many  
17 questions that were asked." (AR 211.) In asking Plaintiff to perform  
18 arithmetic calculations, Dr. Simonian "strongly suspected that  
19 [Plaintiff] was not cooperating, and was producing factitious  
20 symptoms." (Id.) He diagnosed Plaintiff on Axis I with malingering.  
21 (Id.) He also diagnosed her with personality disorder, NOS, with  
22 antisocial personality features. (Id.)

23 The ALJ reviewed and summarized ongoing mental health treatment  
24 that Plaintiff had received from Morongo Basin. (AR 17.) He noted  
25 that Plaintiff had received various forms of treatment for her  
26 allegedly disabling symptoms, but that the treatment has been  
27 "generally successful in controlling those symptoms." (AR 17.) His  
28 review of records from Morongo Basin of January 11, 2008 indicated

1 that Plaintiff had good compliance with medications and that they were  
2 working a little. (Id.) In March 2008, the ALJ noted that Plaintiff  
3 reported she was sleeping better although she still cried frequently  
4 and had a poor appetite. In May 2008, the ALJ noted that Morongo  
5 Basin reported that Plaintiff was feeling less paranoid and a little  
6 better, and that she had good compliance with medications. (Id.) In  
7 June 2008, the ALJ noted that Plaintiff continued to show improvement  
8 during the period of adjudication, that she maintained appropriate  
9 behavior and reported hearing no voices. She had good compliance with  
10 medications and was scheduled for followup. In August 2008, Morongo  
11 Basin reported that Plaintiff stated she had less anger and there was  
12 a decrease in hearing voices, with an increase in her appetite. In  
13 October 2008, Morongo Basin indicated that Plaintiff had been without  
14 medications for a few days and reported voices and irritability. The  
15 ALJ noted that "this suggests that the [Plaintiff's] medications are  
16 effective in controlling her auditory hallucinations and  
17 irritability." (Id.)

18 The ALJ extensively summarized the findings of Plaintiff's  
19 treating psychiatrist, Dr. Puglisi, who had treated Plaintiff since  
20 2007. (AR 19-020.) Dr. Puglisi assessed moderate limitations in  
21 activities of daily living, marked limitations in maintaining social  
22 functioning, and extreme difficulties in maintaining concentration,  
23 persistence or pace. He found extreme episodes of deterioration or  
24 decompensation in work related or other situations. He found a marked  
25 limitation in her ability to remember locations and work-like  
26 procedures, to understand, remember and carry out detailed  
27 instructions, to maintain attention and concentration for extended  
28 periods; to perform activities within a schedule; to maintain regular

1 attendance; to work in coordination with or proximity to others  
2 without being distracted; to make simple work-related decisions; to  
3 complete a normal work day and work week without interruptions from  
4 psychologically based symptoms, and to perform at a consistent pace  
5 without an unreasonable number and length of rest periods. Similar  
6 restrictions were found with regard to Plaintiff's ability to interact  
7 appropriately with the general public; to get along with coworkers or  
8 peers without distracting them or exhibiting behavioral extremes; to  
9 maintain socially appropriate behavior and to adhere to basic  
10 standards of neatness and cleanliness; to respond appropriately to  
11 changes in the work setting; and to tolerate stress in an ordinary  
12 work situation. Dr. Puglisi found Plaintiff to be moderately limited  
13 in her ability to understand, remember, and carry out short and simple  
14 instructions; to sustain an ordinary routine without special  
15 supervision; to accept instructions and respond appropriately to  
16 criticisms from supervisors; to be aware of normal hazards and take  
17 appropriate precautions; to travel in unfamiliar places or use public  
18 transportation; and in her ability to set realistic goals or make  
19 plans independently of others. (AR 19, 240-47.)

20 The ALJ noted that Dr. Puglisi had found similar functional  
21 restrictions in a November 25, 2008 report. (AR 19, 281-88.)

22 Noting that in the hierarchy of opinions, that of a treating  
23 physician is entitled to special significance, the ALJ nevertheless  
24 depreciated the significance of Dr. Puglisi's opinions and afforded  
25 them no significant weight, as he found they conflicted with the  
26 substantial evidence of record which documented less severe  
27 limitations. (AR 20.) Further, the ALJ cited the testimony of the ME  
28 that Dr. Puglisi failed to provide evidence or standard descriptions

1 to support his observations of Plaintiff's mental symptoms. (AR 20,  
2 citing testimony at AR 45-56.)

3 The ALJ assigned "significant weight" to the report of Dr.  
4 Simonian. (AR 16-17, 20.) The ALJ noted Dr. Simonian's discounting of  
5 Plaintiff's reported delusional thinking (AR 210-11), and his  
6 conclusions that Plaintiff was not cooperative in the examination, and  
7 was strongly suspected of producing factitious symptoms. It was noted  
8 that Dr. Simonian diagnosed malingering and personality disorder, NOS.  
9 (Id.)

10 The ALJ heavily relied upon the testimony of the ME, who had  
11 examined all of the records, and in fact, observed and examined  
12 Plaintiff at the ALJ hearing itself. As noted in the Decision, the ME  
13 assessed that Plaintiff had mild limitations in activities of daily  
14 living; mild to moderate limitations in maintaining social  
15 functioning; mild limitations in her capacity to maintain  
16 concentration, persistence and pace; and no episodes of  
17 decompensation. (AR 47.) Thus, the ME assessed that Plaintiff would  
18 be limited to moderately complex tasks in a repetitive setting, that  
19 she could have normal contact with supervisors and coworkers, and  
20 could do object oriented work, but should not perform safety  
21 operations or do fast raped-paced assembly line work, nor work which  
22 involved intense interaction with the public. (Id.)

23 Finally, the ALJ noted and assessed weight to the Psychiatric  
24 Review Technique Form ("PRTF"), completed by non-examining  
25 psychiatrist Dr. Tasjian. (AR 18-19, 218-28.) Dr. Tasjian found mild  
26 limitations in activities of daily living; maintaining social  
27 functioning; and maintaining concentration, persistence or pace. (AR  
28 226.) The ALJ found that this opinion was supported by the medical

1 evidence of record. (AR 18-19.)

2 The ALJ also made credibility findings, which Plaintiff does not  
3 challenge. He assessed that her assertions concerning her impairments  
4 were not considered fully credible in light of her unremarkable mental  
5 status examinations, the effectiveness of medications, and an  
6 inconsistent history she had provided concerning her drug use, in  
7 addition to the suspicion by Dr. Simonian that Plaintiff had produced  
8 factitious symptoms and was malingering. The ALJ noted that at the  
9 hearing, Plaintiff had no difficulties answering and understanding  
10 questions posed to her, and gave logical responses not consistent with  
11 active psychosis. (AR 21.)

12  
13 **B. Applicable Law.**

14 **1. Mental Impairments.**

15 In evaluating mental impairments, 20 C.F.R. §404.1520a(c)(3)(4)  
16 and §416.920a(c)(3)(4) mandate that consideration be given, among  
17 other things, to activities of daily living ("ADLs"), social  
18 functioning; concentration, persistence, or pace; and episodes of  
19 decompensation. These factors are generally analyzed in a Psychiatric  
20 Review Technique Form ("PRTF"). The PRTF is used at Step Three of the  
21 sequential evaluation to determine if a claimant is disabled under the  
22 Listing of Impairments; however, the same data must be considered at  
23 subsequent steps unless the mental impairment is found to be not  
24 severe at Step Two. See SSR 85-16.

25 20 C.F.R. §§404.1520a(c)(1) and 416.920a(c)(1) require  
26 consideration of "all relevant and available clinical signs and  
27 laboratory findings, the effects of your symptoms, and how your  
28 functioning may be affected by factors including, but not limited to,

1 chronic mental disorders, structured settings, medication and other  
2 treatment."<sup>1</sup>

3 SSR 85-16 suggests the following as relevant evidence:

4 "History, findings, and observations from medical  
5 sources (including psychological test results), regarding  
6 the presence, frequency, and intensity of hallucinations,  
7 delusions or paranoid tendencies; depression or elation;  
8 confusion or disorientation; conversion symptoms or phobias;  
9 psycho-physiological symptoms, withdrawn or bizarre  
10 behavior; anxiety or tension. Reports of the individual's  
11 activities of daily living and work activity, as well as  
12 testimony of third parties about the individual's  
13 performance and behavior. Reports from workshops, group  
14 homes, or similar assistive entities."

15  
16 It is also required under §404.1520a(c)(2) and §416.920a(c)(2)  
17 that the ALJ must consider the extent to which the mental impairment  
18 interferes with an "ability to function independently, appropriately,  
19 effectively, and on a sustained basis" including "such factors as the  
20 quality and level of [] overall functional performance, any episodic  
21 limitations [and] the amount of supervision or assistance []  
22 require[d]."

23 Pursuant to the September 2000 amendments to the regulations  
24

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25 <sup>1</sup> 20 C.F.R. §404.1545(c) and §416.945(c) also require  
26 consideration of "residual functional capacity for work activity on a  
27 regular and continuing basis" and a "limited ability to carry out  
28 certain mental activities, such as limitations in understanding,  
remembering, and carrying out instructions, and in responding  
appropriately to supervision, co-workers, and work pressures in a work  
setting."



1 which modify 20 C.F.R. §404.1520a(e)(2) and §416.920a(e)(2), the ALJ  
2 is no longer required to complete and attach a PRTF. The revised  
3 regulations identify five discrete categories for the first three of  
4 four relevant functional areas: activities of daily living; social  
5 functioning; concentration, persistence or pace; and episodes of  
6 decomposition. These categories are None, Mild, Moderate, Marked, and  
7 Extreme. (§404.1520a(c)(3), (4).) In the decision, the ALJ must  
8 incorporate pertinent findings and conclusions based on the PRTF  
9 technique. §404.1520a(e)(2) mandates that the ALJ's decision must show  
10 "the significant history, including examination and laboratory  
11 findings, and the functional limitations that were considered in  
12 reaching a conclusion about the severity of the mental impairment(s).  
13 The decision must include a specific finding as to the degree of  
14 limitation in each of the functional areas described in paragraph (c)  
15 of this section."

16 The Step Two and Three analyses (see Decision at AR 53-54) are  
17 intended to determine, first, whether a claimant has a severe mental  
18 impairment (Step Two), and if so, whether it meets or equals any of  
19 the Listings (Step Three). It is also required under §404.1520a(c)(2)  
20 and §416.920a(c)(2) that the ALJ must consider the extent to which the  
21 mental impairment interferes with an "ability to function  
22 independently, appropriately, effectively, and on a sustained basis"  
23 including "such factors as the quality and level of [] overall  
24 functional performance, any episodic limitations [and] the amount of  
25 supervision or assistance [] require[d]."

26 These findings and conclusions are relevant to the Step Two and  
27 Three analysis of whether a claimant has a severe mental impairment,  
28 and if so, whether it meets or equals any of the Listings. (See 20

1 C.F.R. Part 4, subpart p, App. 1.) The discussion in Listing 12.00,  
2 "Mental Disorders," is relevant:

3 "The criteria in paragraphs B and C describe  
4 impairment-related functional limitations that are  
5 incompatible with the ability to do any gainful activity.  
6 The functional limitations in paragraphs B and C must be the  
7 result of the mental disorders described in the diagnostic  
8 description, that is manifested by the medical findings in  
9 paragraph A.

10 In Listing 12.00C, entitled 'Assessment of Severity,'  
11 it is stated that, 'we assess functional limitations using  
12 the four criteria in paragraph B of the Listings: Activities  
13 of daily living; social functioning; concentration;  
14 persistence, or pace; and episodes of decompensation. Where  
15 we use 'marked' as a standard for measuring the degree of  
16 limitation, it means more than moderate but less than  
17 extreme."

18  
19 **2. Evaluation of Medical Opinions.**

20 The Ninth Circuit has repeatedly enunciated clear standards to  
21 guide the Commissioner in the evaluation of the opinion of a treating  
22 physician. For example, in Magallanes v. Bowen, the court held that,

23 "We afford greater weight to a treating physician's  
24 opinion because 'he is employed to cure and has a greater  
25 opportunity to know and observe the patient as an  
26 individual.' Sprague v. Bowen, 812 F.2d 1226, 1230 (9th  
27 Cir. 1987)(Sprague). The treating physician's opinion is  
28 not, however, necessarily conclusive as to either a physical

1 condition or the ultimate issue of disability. Rodriguez v.  
2 Bowen, 876 F.2d 759, 761-62 & n. 7 (9th Cir.  
3 1989)(Rodriguez) The ALJ may disregard the treating  
4 physician's opinion whether or not that opinion is  
5 contradicted. See id.; Cotton v. Bowen, 799 F.2d 1403, 1408  
6 (9th Cir. 1986)(Cotton)."  
7 (881 F.2d 747, 751)

8  
9 The court in Magallanes continued that,

10 "To reject the opinion of a treating physician which  
11 conflicts with that of an examining physician, the ALJ must  
12 'make findings setting forth specific, legitimate reasons  
13 for doing so that are based on substantial evidence in the  
14 record.' ' Winans v. Bowen, 853 F.2d 643, 647 (9th Cir.  
15 1987)(Winans), quoting Sprague, 812 F.2d at 1230; see also  
16 Murray v. Heckler, 722 F.2d 499, 502 (9th Cir. 1983)(Murray)  
17 (adopting this rule). 'The ALJ can meet this burden by  
18 setting out a detailed and thorough summary of the facts and  
19 conflicting clinical evidence, stating his interpretation  
20 thereof, and making findings.' Cotton, 799 F.2d at 1408."  
21 (881 F.2d 747, 751)

22  
23 This clearly articulated rule, set forth by the Circuit in its  
24 Opinions in Magallanes and Cotton, has been often cited in later  
25 decisions. (See, Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir.  
26 1995): "The ALJ may reject the opinion only if she provides clear and  
27 convincing reasons that are supported by the record as a whole."; Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995): "Even if the

1 treating doctor's opinion is contradicted by another doctor, the  
2 Commissioner may not reject this opinion without providing 'specific  
3 and legitimate reasons' supported by substantial evidence in the  
4 record for so doing." (Citation omitted)).

5 Moreover, the Ninth Circuit has established specific requirements  
6 in situations where the ALJ (as in this case) rejects the opinions of  
7 treating physicians in favor of the opinions of non-treating, non-  
8 examining, testifying medical experts. The rule is succinctly stated  
9 in Morgan v. Apfel, 169 F.3d 595, 602 (9th Cir. 1999):

10 "The opinion of a nonexamining medical advisor cannot  
11 by itself constitute substantial evidence that justifies the  
12 rejection of the opinion of an examining or treating  
13 physician. (citations omitted) In Gallant [Gallant v.  
14 Heckler, 753 F.2d 1450, 1456 (9th Cir. 1984)], we determined  
15 that 'the report of [a] nontreating, nonexamining physician,  
16 combined with the ALJ's own observation of [the] claimant's  
17 demeanor at the hearing,' did not constitute substantial  
18 evidence and, therefore, did not support the Commissioner's  
19 rejection of the examining physician's opinion that the  
20 claimant was disabled. Gallant, 753 F.2d at 1456. In  
21 Pitzer [Pitzer v. Sullivan, 908 F.2d 502 (9th Cir. 1990)],  
22 we held that the nonexamining physician's opinion 'with  
23 nothing more' did not constitute substantial evidence.

24 But we have consistently upheld the Commissioner's  
25 rejection of the opinion of a treating or examining  
26 physician, based *in part* on the testimony of the  
27 nontreating, nonexamining medical advisor. [citations  
28 omitted] In Magallanes [Magallanes v. Bowen, 881 F.2d 747

1 (9th Cir. 1989)], evidence that supported the ALJ's  
2 determination included, among other things, testimony from  
3 the claimant that conflicted with her treating physician's  
4 opinion." [citation omitted]

5 (169 F.3d at 602)

6  
7 Also instructive is the Ninth Circuit's discussion of this issue  
8 in Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995):

9 "Where the opinion of the claimant's treating physician  
10 is contradicted, and the opinion of a nontreating source is  
11 based on independent clinical findings that differ from  
12 those of the treating physician, the opinion of the  
13 nontreating source may itself be substantial evidence; it is  
14 then solely the province of the ALJ to resolve the conflict.  
15 Magallanes, 881 F.2d at 751. Where, on the other hand, a  
16 nontreating source's opinion contradicts that of the  
17 treating physician but is not based on independent clinical  
18 findings, or rests on clinical findings also considered by  
19 the treating physician, the opinion of the treating  
20 physician may be rejected only in the ALJ gives specific,  
21 legitimate reasons for doing so that are based on  
22 substantial evidence in the record. Id. at 751, 755. See  
23 Ramirez v. Shalala, 8 F.3d 1449, 1453 (9th Cir. 1993)  
24 (applying test where ALJ relied on contradictory opinion of  
25 nonexamining medical advisor)."

26 (53 F.3d at 1041.)

27 //

28 //

1 **ANALYSIS**

2 While Plaintiff attaches great weight to the opinion of her  
3 treating psychiatrist, Dr. Puglisi, the Court does not view the ALJ's  
4 depreciation of Dr. Puglisi's opinion as unreasonable, because, in  
5 fact, much of his opinion was based on subjective evidence, and his  
6 reports were largely conclusory and unsupported. See Tonapetyan v.  
7 Halter, 242 F.3d 1144, 1149 (9<sup>th</sup> Cir. 2001); Crane v. Shalala, 76 F.3d  
8 251, 253 (9<sup>th</sup> Cir. 1996). Moreover, there was extensive testimony by  
9 the ME at the hearing concerning Dr. Puglisi's findings, which largely  
10 detracted from their validity. The ME specifically testified that Dr.  
11 Puglisi failed to provide evidence or standard descriptions to support  
12 his observations and conclusions as to Plaintiff's mental condition.  
13 This factor is supported in the regulations. See 20 C.F.R.  
14 §404.1527(e)(2)(ii).

15 In addition, while Plaintiff claims that Dr. Puglisi's findings  
16 are more consistent with the record than inconsistent, this does not  
17 appear to be the case. As noted, Dr. Puglisi's conclusions were  
18 substantially disagreed with by Dr. Simonian, Dr. Tasjian, and the ME.  
19 Moreover, the Court cannot disagree that the progress reports from  
20 Morongo Basin, to the extent they do not seem to rely upon Plaintiff's  
21 subjective complaints, do not support the extreme functional  
22 assessments of disability rendered by Dr. Puglisi. As observed by the  
23 ME, with the type of marked limitations assessed by Dr. Puglisi, a  
24 person cannot be maintained with once-a-month visits to a mental  
25 health center. (AR 56.)

26 For the same reason that the Court upholds the ALJ's assessment  
27 of Plaintiff's medical condition, it also finds that the ALJ properly  
28 rejected the contention that Plaintiff met one of the Listings. It

1 is, of course, Plaintiff's burden to demonstrate that she meets each  
2 required characteristic of a Listing. See Bowen v. Yuckert, 482 U.S.  
3 137, 153 (1987); 20 C.F.R. §404.1526; Tackett v. Apfel, 180 F.3d 1094,  
4 1099 (9<sup>th</sup> Cir. 1999). Plaintiff has failed to demonstrate that she had  
5 all the requisite medical criteria in the Listing. See 20 C.F.R.  
6 §416.925(d). The ME further testified that Plaintiff did not meet or  
7 equal any Listing. (AR 71.)

8 Because the Court has rejected Plaintiff's contention that Dr.  
9 Puglisi's functional limitations should have been sustained by the  
10 ALJ, her second issue must also fail. That is, the Court concludes  
11 that the ALJ posed a proper hypothetical to the vocational expert  
12 ("VE") which did not include those limitations assessed by Dr.  
13 Puglisi. The limitations assessed by Dr. Puglisi were not sustained  
14 by the ALJ, and this Court has found that the ALJ did not err in doing  
15 so. Consequently, it cannot be contended that the hypothetical  
16 questions posed to the VE failed to include all of Plaintiff's found  
17 limitations. See Andrews v. Shalala, 53 F.3d 1035, 1044 (9<sup>th</sup> Cir.  
18 1995).

19 The decision of the ALJ will be affirmed. The Complaint will be  
20 dismissed with prejudice.

21 **IT IS SO ORDERED.**

22  
23 DATED: February 9, 2011

\_\_\_\_\_/s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE