



UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

RHONDA LEANNE HAMLIN,	)	Case No. CV 12-6369-JPR
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
vs.	)	AFFIRMING THE COMMISSIONER
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of	)	
Social Security, <sup>1</sup>	)	
	)	
Defendant.	)	

**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying her applications for Social Security disability insurance benefits ("DIB") and Supplemental Security Income benefits ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed April 19, 2013, which the Court has taken

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<sup>1</sup> On February 14, 2013, Colvin became the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d), the Court therefore substitutes Colvin for Michael J. Astrue as the proper Respondent.

1 under submission without oral argument. For the reasons stated  
2 below, the Commissioner's decision is affirmed and this action is  
3 dismissed.

#### 4 **II. BACKGROUND**

5 Plaintiff was born on May 14, 1975. (Administrative Record  
6 ("AR") 106.) She has a high-school education. (AR 14.) She has  
7 worked as a cashier, fast-food employee, and housecleaner. (AR  
8 129.)

9 On May 19, 2009, Plaintiff filed applications for DIB and  
10 SSI, alleging that she had been unable to work since April 25,  
11 2008, because of mental illness. (AR 106, 113, 128.) After her  
12 applications were denied, Plaintiff requested a hearing before an  
13 Administrative Law Judge ("ALJ"). (AR 93-94.) A hearing was  
14 held on February 2, 2011, at which Plaintiff, who was represented  
15 by a nonattorney representative, testified, as did a vocational  
16 expert ("VE"). (AR 11-29.) In a written decision issued  
17 February 25, 2011, the ALJ found that Plaintiff was not disabled.  
18 (AR 57-73.) On June 1, 2012, the Appeals Council considered  
19 additional evidence from Plaintiff's treating psychiatrist but  
20 denied Plaintiff's request for review. (AR 1-6.) This action  
21 followed.

#### 22 **III. STANDARD OF REVIEW**

23 Pursuant to 42 U.S.C. § 405(g), a district court may review  
24 the Commissioner's decision to deny benefits. The ALJ's findings  
25 and decision should be upheld if they are free of legal error and  
26 supported by substantial evidence based on the record as a whole.  
27 Id.; Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420,  
28 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d 742, 746

1 (9th Cir. 2007). Substantial evidence means such evidence as a  
2 reasonable person might accept as adequate to support a  
3 conclusion. Richardson, 402 U.S. at 401; Lingenfelter v. Astrue,  
4 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla  
5 but less than a preponderance. Lingenfelter, 504 F.3d at 1035  
6 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir.  
7 2006)). To determine whether substantial evidence supports a  
8 finding, the reviewing court "must review the administrative  
9 record as a whole, weighing both the evidence that supports and  
10 the evidence that detracts from the Commissioner's conclusion."  
11 Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1996). "If the  
12 evidence can reasonably support either affirming or reversing,"  
13 the reviewing court "may not substitute its judgment" for that of  
14 the Commissioner. Id. at 720-21.

#### 15 **IV. THE EVALUATION OF DISABILITY**

16 People are "disabled" for purposes of receiving Social  
17 Security benefits if they are unable to engage in any substantial  
18 gainful activity owing to a physical or mental impairment that is  
19 expected to result in death or which has lasted, or is expected  
20 to last, for a continuous period of at least 12 months. 42  
21 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257  
22 (9th Cir. 1992).

##### 23 **A. The Five-Step Evaluation Process**

24 The ALJ follows a five-step sequential evaluation process in  
25 assessing whether a claimant is disabled. 20 C.F.R.  
26 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,  
27 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first  
28 step, the Commissioner must determine whether the claimant is

1 currently engaged in substantial gainful activity; if so, the  
2 claimant is not disabled and the claim must be denied.

3 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is not  
4 engaged in substantial gainful activity, the second step requires  
5 the Commissioner to determine whether the claimant has a "severe"  
6 impairment or combination of impairments significantly limiting  
7 her ability to do basic work activities; if not, a finding of not  
8 disabled is made and the claim must be denied.

9 §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant has a  
10 "severe" impairment or combination of impairments, the third step  
11 requires the Commissioner to determine whether the impairment or  
12 combination of impairments meets or equals an impairment in the  
13 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part  
14 404, Subpart P, Appendix 1; if so, disability is conclusively  
15 presumed and benefits are awarded. §§ 404.1520(a)(4)(iii),  
16 416.920(a)(4)(iii). If the claimant's impairment or combination  
17 of impairments does not meet or equal an impairment in the  
18 Listing, the fourth step requires the Commissioner to determine  
19 whether the claimant has sufficient residual functional capacity  
20 ("RFC")<sup>2</sup> to perform her past work; if so, the claimant is not  
21 disabled and the claim must be denied. §§ 404.1520(a)(4)(iv),  
22 416.920(a)(4)(iv). The claimant has the burden of proving that  
23 she is unable to perform past relevant work. Drouin, 966 F.2d at  
24 1257. If the claimant meets that burden, a prima facie case of  
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26  
27 <sup>2</sup> RFC is what a claimant can do despite existing  
28 exertional and nonexertional limitations. 20 C.F.R. §§ 404.1545,  
416.945; see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th  
Cir. 1989).

1 disability is established. Id. If that happens or if the  
2 claimant has no past relevant work, the Commissioner then bears  
3 the burden of establishing that the claimant is not disabled  
4 because she can perform other substantial gainful work available  
5 in the national economy. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).  
6 That determination comprises the fifth and final step in the  
7 sequential analysis. §§ 404.1520, 416.920; Lester, 81 F.3d at  
8 828 n.5; Drouin, 966 F.2d at 1257.

9 B. The ALJ's Application of the Five-Step Process

10 At step one, the ALJ found that Plaintiff had not engaged in  
11 any substantial gainful activity since April 25, 2008. (AR 62.)  
12 At step two, the ALJ concluded that Plaintiff had the severe  
13 impairments of impulse-control disorder, borderline intellectual  
14 functioning, panic attacks, borderline personality disorder,  
15 intermittent explosive disorder, psychosis, developmental  
16 disability, obesity, depression, anxiety, and history of alcohol  
17 and polysubstance abuse. (Id.) At step three, the ALJ  
18 determined that Plaintiff's impairments did not meet or equal any  
19 of the impairments in the Listing. (AR 65.) At step four, the  
20 ALJ found that Plaintiff retained the RFC to perform a full range  
21 of work at all exertional levels but with the nonexertional  
22 limitations that she should be limited to simple, routine tasks  
23 and minimal contact with the public and coworkers. (AR 66.)  
24 Based on the VE's testimony, the ALJ concluded that Plaintiff was  
25 capable of performing jobs that existed in significant numbers in  
26 the national economy. (AR 67-68.) Accordingly, the ALJ  
27 determined that Plaintiff was not disabled. (AR 68.)  
28

1 **V. DISCUSSION**

2 Plaintiff alleges that the ALJ erred in (1) rejecting the  
3 opinion of one of her treating psychiatrists, Nancy Smith, and  
4 (2) finding Plaintiff's subjective symptom testimony not  
5 credible. (J. Stip. at 3.)

6 A. The ALJ Properly Evaluated the Medical Evidence

7 Plaintiff contends that the ALJ failed to properly consider  
8 the opinions of treating psychiatrist Dr. Smith. (J. Stip. at 3-  
9 8, 13-17.) Remand is not warranted on that basis, however,  
10 because the ALJ provided legally sufficient reasons for according  
11 little weight to Dr. Smith's opinions.

12 1. Applicable law

13 Three types of physicians may offer opinions in Social  
14 Security cases: "(1) those who treat[ed] the claimant (treating  
15 physicians); (2) those who examine[d] but d[id] not treat the  
16 claimant (examining physicians); and (3) those who neither  
17 examine[d] nor treat[ed] the claimant (non-examining  
18 physicians)." Lester, 81 F.3d at 830. A treating physician's  
19 opinion is generally entitled to more weight than the opinion of  
20 a doctor who examined but did not treat the claimant, and an  
21 examining physician's opinion is generally entitled to more  
22 weight than that of a nonexamining physician. Id.

23 The opinions of treating physicians are generally afforded  
24 more weight than the opinions of nontreating physicians because  
25 treating physicians are employed to cure and have a greater  
26 opportunity to know and observe the claimant. Smolen v. Chater,  
27 80 F.3d 1273, 1285 (9th Cir. 1996). If a treating physician's  
28 opinion is well supported by medically acceptable clinical and

1 laboratory diagnostic techniques and is not inconsistent with the  
2 other substantial evidence in the record, it should be given  
3 controlling weight. 20 C.F.R. §§ 404.1527(c)(2), 416.927(c)(2).  
4 If a treating physician's opinion is not given controlling  
5 weight, its weight is determined by length of the treatment  
6 relationship, frequency of examination, nature and extent of the  
7 treatment relationship, amount of evidence supporting the  
8 opinion, consistency with the record as a whole, the doctor's  
9 area of specialization, and other factors. 20 C.F.R.  
10 §§ 404.1527(c)(2)-(6), 416.927(c)(2)-(6).

11 When a treating doctor's opinion is not contradicted by  
12 another doctor, it may be rejected only for "clear and  
13 convincing" reasons. Carmickle v. Comm'r, Soc. Sec. Admin., 533  
14 F.3d 1155, 1164 (9th Cir. 2008) (quoting Lester, 81 F.3d at 830-  
15 31). When a treating physician's opinion conflicts with another  
16 doctor's, the ALJ must provide only "specific and legitimate  
17 reasons" for discounting it. Id. Further, the ALJ need not  
18 accept any medical opinion that conflicts with the physician's  
19 own treatment notes or the record as a whole. See Bayliss v.  
20 Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005) (holding that  
21 discrepancy between physician's notes and his assessment of  
22 limitations was "clear and convincing" reason for rejecting  
23 opinion); Connett v. Barnhart, 340 F.3d 871, 874-75 (9th Cir.  
24 2003) (affirming ALJ's rejection of physician's RFC questionnaire  
25 because it was "not supported by his own notes" and "had multiple  
26 inconsistencies with all other evaluations" (alteration  
27 omitted)).

1           2.    Relevant facts

2           On August 17, 2006, Plaintiff visited primary-care physician  
3 Dr. Joseph Ortiz. (AR 203.) He examined her and noted that she  
4 had "a history of anxiety and depression" but was currently  
5 "stabilized" on Zoloft and Trazodone.<sup>3</sup> (Id.) He also noted that  
6 she had been having "anger outages along with chronic  
7 intermittent tension headaches, and these are stable." (Id.)  
8 She denied currently having headaches, visual symptoms,  
9 paresthesias,<sup>4</sup> weakness of extremities, or abrupt changes in  
10 behavior, and her mood was noted as "stable" with no  
11 "homicidality or suicidality." (Id.) Her vital signs and  
12 physical exam were normal. (Id.) Her neurological symptoms were  
13 noted as "[a]llert and oriented" with no acute deficits, and her  
14 headaches, anxiety, and depression were again noted as "stable."  
15 (Id.)

16           On October 3, 2006, social worker Victoria Roberts noted  
17 that Plaintiff's doctor, "Dr. A," had referred Plaintiff for  
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19           <sup>3</sup>       Trazodone is a serotonin modulator used to treat  
20 depression. Trazodone, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a681038.html> (last updated June 26,  
21 2013). Zoloft is a selective serotonin reuptake inhibitor used  
22 to treat depression, obsessive-compulsive disorder, panic  
23 attacks, and social anxiety disorder. Sertraline, MedlinePlus,  
<http://www.nlm.nih.gov/medlineplus/druginfo/meds/a697048.html>  
(last updated June 26, 2013).

24           <sup>4</sup>       Paresthesia is "a burning or prickling sensation that  
25 is usually felt in the hands, arms, legs, or feet, but can also  
26 occur in other parts of the body." Parasthesia Information Page,  
National Institute of Neurological Disorders and Stroke,  
27 <http://www.ninds.nih.gov/disorders/paresthesia/paresthesia.htm>  
(last updated May 6, 2010). It is "usually painless and  
28 described as tingling or numbness, skin crawling, or itching."  
Id.



1 counseling and case-management services in connection with her  
2 participation in a drug diversion program and application for  
3 various government benefits, including SSI. (AR 206.) She wrote  
4 that Plaintiff's doctor described her as "developmentally delayed  
5 [and] currently experiencing [increased] 'rage[,]'" [and] Zoloft  
6 is only limitedly helpful." (Id.) She noted that it appeared  
7 that Plaintiff "may need neurological eval. due to birth trauma  
8 [and] years of head injuries due to domestic violence [and]  
9 battery." (Id.)

10 On October 15, 2006, consulting psychiatrist Dr. Gabrielle  
11 Paladino performed a "comprehensive psychiatric evaluation" of  
12 Plaintiff. (AR 209.) She spent 40 minutes meeting with and  
13 examining Plaintiff. (AR 214.) She noted that Plaintiff  
14 complained of a history of panic attacks, but they were "getting  
15 better" over time. (AR 209.) Plaintiff described her mood as  
16 "up and down" depending on her stress level, and she complained  
17 about financial stressors. (AR 210.) Plaintiff stated that she  
18 was working as a caregiver for her mother and two other women and  
19 was also working as a housekeeper. (AR 210.) She "denied  
20 feeling helpless, useless, worthless, overwhelmed or hopeless"  
21 but "did endorse feeling frustrated about her current financial  
22 situation." (Id.) She recounted her history of drug and alcohol  
23 abuse but stated that she had not used drugs for approximately  
24 nine months and was attending a 12-step program. (Id.) When  
25 asked about her past medical history, Plaintiff "stated that she  
26 does not believe she has any serious or chronic medical  
27 problems." (AR 211.) Dr. Paladino noted that Plaintiff was  
28 alert and oriented, was a "sincere and reliable" historian, and

1 her memory was "intact." (AR 212.) She further noted that  
2 Plaintiff was well groomed, her mood was "open, polite, pleasant,  
3 and friendly," she "easily established good rapport with the  
4 examiner," and her "affect was broad and appropriate to her  
5 mood." (Id.) Plaintiff's speech was spontaneous, fluent, and  
6 well modulated, and Plaintiff denied auditory and visual  
7 hallucinations and suicidal or homicidal ideation. (Id.) There  
8 was "no evidence of paranoid thought processes, grossly  
9 delusional thinking, flight of ideas, tangentiality,  
10 circumstantiality, thought blocking, word salad, grandiosity or  
11 pressured speech." (Id.) Plaintiff also displayed "no unusual  
12 psychomotor agitation or retardation" and "demonstrated good  
13 humor throughout the interview." (Id.) Plaintiff's cognitive  
14 functions were generally normal, though Plaintiff's "[i]nsight  
15 into her condition and judgment appear to be marginal." (Id.)  
16 Dr. Paladino diagnosed Plaintiff as having "[p]anic attacks with  
17 agoraphobia, very mild," and a history of polysubstance abuse and  
18 dependence, and she assessed a current Global Assessment of  
19 Functioning ("GAF") score of 65-70 and "highest GAF all year  
20 same."<sup>5</sup> (AR 212-13.)

21 Dr. Paladino then assessed Plaintiff's functional  
22 capacities. She stated that Plaintiff's panic attacks "are mild  
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24 <sup>5</sup> A GAF score represents a rating of overall  
25 psychological functioning on a scale of 0 to 100. See Am.  
26 Psychiatric Ass'n, Diagnostic and Statistical Manual of Disorders  
27 [hereinafter DSM-IV], Text Revision 34 (4th ed. 2000). A GAF  
28 score between 60 and 70 indicates "some mild symptoms (e.g.  
depressed mood and mild insomnia) OR some difficulty in social,  
occupational, or school functioning . . . but generally  
functioning pretty well, has some meaningful interpersonal  
relationships." Id.

1 and were probably triggered by methamphetamine abuse" and had  
2 "correspondingly decreased in severity" since Plaintiff had  
3 stopped using illegal drugs. (AR 213.) She also noted that  
4 Plaintiff's disability application "alleged problems with anger,  
5 but there was no evidence of such a problem during today's  
6 interview." "If anything," Dr. Paladino noted, "the claimant was  
7 quite cordial and pleasant throughout today's interview." (Id.)  
8 Dr. Paladino noted that given Plaintiff's history of working as a  
9 caregiver and her presentation during the examination, Plaintiff  
10 "would be able to appropriately relate with, interact with and  
11 deal with others"; concentrate and pay attention for two-hour  
12 increments; process "at least two- or three-step job  
13 instructions"; and "respond to simple changes in a routine work  
14 setting and . . . engage in group, goal-directed activities at  
15 work, such as following safety regulations and attendance rules."  
16 (Id.) She concluded that Plaintiff would not be a "cause for  
17 fear or distraction" by others in the workplace and would be able  
18 to use public transportation to get to work, maintain basic  
19 standards of decency and personal hygiene, accept feedback from  
20 supervisors, and work in "close proximity to others" without  
21 "deteriorating into behavioral extremes." (AR 213-14.) Thus,  
22 Dr. Paladino concluded that Plaintiff was able to work, though  
23 her prognosis was "guarded" in light of Plaintiff's history of  
24 substance abuse. (AR 214.)

25 On June 27, 2008, Plaintiff's primary care was transferred  
26 to Dr. Robert Guerra. (AR 225.) He noted upon her first visit  
27 that Plaintiff's "problems began in 2005," after she "lost her  
28 father in 2004" and was "having suddenly stress triggers with

1 public contact, easily overwhelmed and aggravated." (Id.) He  
2 also noted that Plaintiff had been prescribed a combination of  
3 Risperdal,<sup>6</sup> Trazodone, and Zoloft; she had "done well with the  
4 combination and it has stabilized a lot of the anger that she has  
5 experienced"; and she was no longer using illegal drugs or  
6 alcohol. (Id.) Plaintiff's physical examination was normal, and  
7 the doctor noted that she "has had good response to her  
8 medications" for her psychiatric issues. (Id.)

9 On August 22, 2008, Plaintiff visited Dr. Guerra to request  
10 a referral to a psychiatrist for medication management. (AR  
11 221.) Dr. Guerra noted that Plaintiff had last been under  
12 psychiatric care in 2007 and that she had been diagnosed with "a  
13 mood disorder, depression, borderline intellectual functioning,  
14 borderline personality disorder, methamphetamine use, [and]  
15 impulse control disorder." (Id.) He noted that Plaintiff did  
16 not feel "completely stable" with her current medication, though  
17 she had "some positive effect" from her medications and denied  
18 active suicidal ideations. (Id.) He referred Plaintiff to  
19 psychiatry at her request, to follow up on treatment of "her  
20 depression, intermittent explosive disorder and to have a  
21 psychiatrist further refine her treatment." (Id.)

22 On June 5, 2009, Plaintiff was evaluated by a social worker  
23 with the Santa Barbara County Alcohol, Drug and Mental Health  
24 Department. (AR 229-36.) He noted that Plaintiff complained of  
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27 <sup>6</sup> Risperdal is an antipsychotic medication used to treat  
28 symptoms of schizophrenia and bipolar disorder. Risperidone,  
MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a694015.html> (last updated June 26, 2013).

1 auditory hallucinations telling her to kill her mother or  
2 herself, though she denied any suicidal or homicidal intent. (AR  
3 231, 233.) He noted that Plaintiff had a history of drug and  
4 alcohol abuse, had suffered a head injury from domestic abuse by  
5 her ex-boyfriend in 2005, and had developmental delays caused by  
6 being born with her umbilical cord wrapped around her neck. (AR  
7 231.) He noted with respect to her mental status that Plaintiff  
8 was oriented and did not suffer from delusions, compulsions,  
9 obsessions, or ideas of reference, but she did have auditory  
10 hallucinations, a depressed and anxious mood, and a shallow  
11 affect. (AR 234.) Plaintiff reported unspecified memory  
12 problems, but her thought processes were logical and coherent,  
13 her speech was normal, and her judgment and insight were fair.  
14 (AR 235.)

15 On July 14, 2009, Plaintiff was evaluated by consulting  
16 psychiatrist L. Leaf. (AR 237.) Dr. Leaf noted that Plaintiff  
17 had the impairments of "mood disorder NOS" and anxiety with  
18 "recurrent severe panic attacks." (AR 241-42.) Plaintiff was  
19 noted to have mild restriction of her activities of daily living,  
20 mild difficulties in maintaining social functioning, moderate  
21 difficulties in maintaining concentration, persistence, or pace,  
22 and no episodes of decompensation. (AR 247.) Dr. Leaf reviewed  
23 and summarized the medical evidence and noted that Plaintiff was  
24 able to clean, cook, socialize, and care for her personal needs,  
25 and she also assisted her mother in all daily activities. (AR  
26 249.) Dr. Leaf assessed that Plaintiff was able to perform  
27 simple, repetitive tasks with normal supervision and would  
28 "benefit from a low stress environment." (Id.) Dr. Leaf then

1 performed a mental RFC assessment, noting that Plaintiff was  
2 moderately limited in the ability to understand, remember, and  
3 carry out detailed instructions, maintain attention and  
4 concentration, complete a normal workday and workweek without  
5 interruptions from psychological symptoms or an unreasonable  
6 number and length of rest periods, interact appropriately with  
7 the general public, and respond appropriately to changes in the  
8 work setting, but she was not significantly limited in any other  
9 aspects. (AR 251-52.) Dr. Leaf concluded that Plaintiff was  
10 able to understand and follow simple instructions, could perform  
11 routine tasks, had no limitations in social interactions or  
12 attendance, and could relate well to others and adapt to routine  
13 changes in the work environment. (AR 253.)

14 On June 5, 2009, Plaintiff visited psychiatrist Dr. Jeffrey  
15 Davis at the county mental-health-services office. (AR 266-68.)  
16 Dr. Davis noted Plaintiff's history of being born with her  
17 umbilical cord around her neck, domestic violence, and past drug  
18 use. (AR 266-67.) He noted that her "chief complaint" was  
19 hearing voices, which started in 2005 and told her to kill her  
20 mother and herself, though she did not act on their suggestions.  
21 (AR 266.) He also noted that at some unspecified point in time,  
22 Plaintiff claimed to have tried to "play chicken with a semi-  
23 truck" but had jumped out of the way at the last minute. (Id.)  
24 He noted that her symptoms included depressed mood, mood swings,  
25 insomnia, auditory hallucinations, and 60-pound weight gain.  
26 (Id.) He described Plaintiff's demeanor as "alert" and "in no  
27 perceptible distress" and noted that she was dressed and groomed  
28 appropriately. (AR 267.) Plaintiff spoke normally, made good

1 eye contact, and was cooperative and engaged. (Id.) She was  
2 oriented to person, place, time, and situation, and her affect  
3 was broad, neutral, mood-congruent, and appropriate, though her  
4 mood was somewhat contradictorily noted as euthymic, anxious,  
5 dysphoric, dysthymic, depressed, and manic. (Id.) Plaintiff  
6 showed no signs of psychotic ideation, misperception, delusion,  
7 or suicidal or homicidal ideation, and her impulse control,  
8 judgment, and insight were judged to be "fair to good." (Id.)  
9 Plaintiff's movements and ambulation were normal. (Id.) Dr.  
10 Davis noted that Plaintiff had no history of "developmental or  
11 educational difficulties." (Id.) He also noted that she had  
12 "low normal intelligence" and that it created "employment  
13 limitations which place [her] in lowest socioeconomic pay scale,  
14 perhaps below what she might obtain if on disability." (Id.) He  
15 concluded by noting that Plaintiff was "[p]sychiatrically  
16 stable," though she continued to have "persistent psychotic  
17 symptoms requiring medication modification"; her current  
18 medications were noted as "well tolerated and are having no  
19 apparent untoward effects." (AR 268.) He continued her current  
20 medications and also prescribed Abilify.<sup>7</sup> (Id.)

21 On August 17, 2009, Plaintiff again saw Dr. Davis. (AR 263-  
22 65.) He noted that she had a "[d]epressed mood," but it was  
23 "more level - [n]either terribly happy nor sad," she had no  
24 recent suicidal ideations, and she was "better," with "50%

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26 <sup>7</sup> Abilify is an antipsychotic medication used to treat  
27 various mental illnesses, including schizophrenia and depression.  
28 See Aripiprazole, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a603012.html> (last updated June 26, 2013).

1 improvement." (AR 263.) Plaintiff's mood swings were "gone,"  
2 she was "sleeping well," and her auditory hallucinations were  
3 ongoing but her "psychotic sym[p]toms [were] not as bothersome as  
4 before." (Id.) Dr. Davis noted that Plaintiff was exercising,  
5 had lost five pounds, and had "more energy with Abilify," and her  
6 anxiety was "good with sertraline and trazodone; no more panic  
7 attacks." (Id.) He noted that Plaintiff was alert, cooperative,  
8 and in no distress, and her psychiatric symptoms were normal.  
9 (Id.) He again concluded that Plaintiff was "[p]sychiatrically  
10 stable," and her "persistent psychotic symptoms" were well  
11 managed with medication. (AR 264.)

12 Notes from Plaintiff's visits to the county mental-health-  
13 services office between June and September 2009 for medication  
14 checkups and refills show that Plaintiff was "responding well" to  
15 her medications and reported feeling "less depressed." (AR 269-  
16 74.)

17 On October 12, 2009, Plaintiff visited Dr. Davis, who noted  
18 that Plaintiff, on her current medications, reported that her  
19 mood was "normal," denied broad fluctuations in mood, and  
20 reported being "on a more even keel" "but sometimes if she  
21 becomes overwhelmed, she also becomes frustrated and angry." (AR  
22 299.) He noted that she was sleeping well and her auditory  
23 hallucinations had come back, but an increase in her dosage of  
24 Abilify "was helpful." (Id.) Plaintiff reported that she had  
25 not used illegal drugs in 22 months and had not had any panic  
26 attacks. (Id.) Plaintiff's behavior and mental status were  
27 normal. (AR 299-300.) Dr. Davis noted that Plaintiff was  
28 "[p]sychiatrically stable," and her symptoms were managed with



1 medication, which was "well tolerated." (AR 301.)

2 On October 14, 2009, consulting psychiatrist Dr. K. Loomis  
3 reviewed the record and found that Plaintiff was capable of  
4 performing simple, repetitive tasks. (AR 275-77.)

5 Plaintiff saw Dr. Davis again on February 12 and March 10,  
6 2010, when her symptoms were again reported as stable and  
7 controlled by her medications. (AR 296-98, 316-17.)

8 On April 15, 2010, Plaintiff first saw psychiatrist Dr.  
9 Nancy Smith, at the county mental-health-services office; Dr.  
10 Smith appears to have taken over Plaintiff's case from Dr. Davis.  
11 (AR 294-95.) Plaintiff told Dr. Smith that she had been "hearing  
12 voices and Dr. Davis got me regulated on some medication and I  
13 don't hear them any more." (AR 294.) She described her mental  
14 state as "I have my ups and downs, today I am OK." (Id.) Dr.  
15 Smith noted that Plaintiff "takes care of" her mother and had  
16 "filed for social security." (Id.) She also noted that  
17 Plaintiff "stopped working due to not being able to work and deal  
18 with the voices," but she "feels less depressed" after Dr. Davis  
19 changed her medications. (Id.) Plaintiff admitted to drinking  
20 "2-3 beers daily this past month" because she was "depressed and  
21 lonely." (Id.) When asked about work, Plaintiff responded that  
22 work "stressed [her] out," she was "unable to think of what she  
23 can do for work," and she was "waiting for a court date for  
24 disability." (AR 295.) Dr. Smith noted that in school,  
25 Plaintiff was "in special ed with a learning disability . . .  
26 with the slow learners." (Id.)

27 Dr. Smith examined Plaintiff and found that she was  
28 "oriented in all spheres," knew who the current president was,

1 "recalled 2/3 words at 5 minutes," and "was able to subtract  
2 serial threes with difficulty." (Id.) Plaintiff stated that she  
3 had last heard voices "a year ago," up until Dr. Davis put her on  
4 Abilify. (Id.) Dr. Smith then noted that Plaintiff "is a very  
5 low functioning individual and would never be able to compete on  
6 the open labor market." (Id.) She diagnosed Plaintiff with  
7 psychosis not otherwise specified, mood disorder not otherwise  
8 specified, alcohol abuse, a "mild developmental disability," and  
9 obesity and noted that it was "difficult for [Plaintiff] to care  
10 for her obese mother," who was in a wheelchair. (Id.) She  
11 assessed a GAF score of 40.<sup>8</sup> (Id.) Her prognosis was "[g]uarded  
12 for marked improvement"; she also noted that she "believe[d]  
13 [Plaintiff] needs SSI" because "[s]he is better now than before,  
14 but I do not believe that she could hold down a job due to her  
15 slowness and probable brain injury from the assault (bike thrown  
16 at her)." (Id.)

17 Plaintiff saw Dr. Smith again on June 29, 2010. (AR 292.)  
18 Dr. Smith noted that Plaintiff "is doing better than 2 months ago  
19 since I last saw her" and had started attending Alcoholics  
20 Anonymous meetings. (Id.) She noted that Plaintiff's  
21 concentration was better on Abilify but "still is not what it was  
22 before 2005." (Id.) Plaintiff was still taking care of her  
23 mother and reported "making a very small amount of money from"

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24  
25 <sup>8</sup> A GAF score of 40 indicates "some impairment in reality  
26 testing or communication (e.g., speech is at times illogical,  
27 obscure, or irrelevant) OR major impairment in several areas,  
28 such as work or school, family relations, judgment, thinking, or  
mood (e.g., depressed man avoids friends, neglects family, and is  
unable to work[.])." See DSM-IV, supra note 5, at Text Revision  
34.

1 doing so. (AR 292-93.) Plaintiff's affect was noted as  
2 "cheerful," and she stated that she "no longer hears voices on  
3 the Abilify." (AR 293.) Dr. Smith described Plaintiff as having  
4 "a very sweet and innocent way about her." (Id.) In her  
5 diagnosis, she noted that Plaintiff "is a very low functioning  
6 individual and would never be able to compete on the open labor  
7 market." (Id.)

8 On October 5, 2010, Dr. Smith filled out a Mental Residual  
9 Functional Capacity Questionnaire. (AR 282-87.) She stated that  
10 she was seeing Plaintiff every three months for one hour at a  
11 time. (AR 282.) She noted diagnoses of depression and psychosis  
12 not otherwise specified, developmental disability, obesity, and a  
13 current GAF of 50.<sup>9</sup> (Id.) She stated that Plaintiff heard  
14 voices, which "decreased a little w/ Abilify - still hears some  
15 voices, voices developed (onset) after beaten by [boyfriend]."  
16 (Id.) She stated that Plaintiff was "oriented in all spheres"  
17 and her prognosis was "guarded." (AR 283.) She checked boxes  
18 indicating that Plaintiff had the symptoms of "anhedonia or  
19 pervasive loss of interest in almost all activities," "appetite  
20 disturbance with weight change," "decreased energy," "thoughts of  
21 suicide," "blunt" and "inappropriate" affect, "feelings of guilt  
22 or worthlessness," "impairment in impulse control," "poverty of  
23 content of speech," "generalized persistent anxiety," "mood  
24 disturbance," "mild" difficulty thinking or concentrating,  
25

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26 <sup>9</sup> A GAF score of 50 indicates "serious symptoms (e.g.,  
27 suicidal ideation, severe obsessional rituals, frequent  
28 shoplifting) OR any serious impairment in social, occupational,  
or school functioning (e.g., no friends, unable to keep a job)."  
See DSM-IV, supra note 5, at Text Revision 34.

1 "recurrent and intrusive recollections of a traumatic experience,  
2 which are a source of marked distress," "mild" retardation,  
3 pathological passivity, persistent disturbances of mood, "mild[]"  
4 seclusiveness, "mild" isolation, hallucinations or delusions with  
5 "some voices," and "very mild" memory impairment. (Id.) In the  
6 category, "Loss of intellectual ability of 15 IQ points or more,"  
7 she wrote, "it appears that way?" (Id.)

8 Dr. Smith indicated that Plaintiff's "psychological or  
9 behavioral abnormalities" were associated with a "dysfunction of  
10 the brain." (AR 284.) She indicated that Plaintiff's ability to  
11 remember work-like procedures, understand and remember very short  
12 and simple instructions, ask simple questions or request  
13 assistance, accept instructions and respond appropriately to  
14 criticism from supervisors, and get along with coworkers or peers  
15 without unduly distracting them or exhibiting behavioral extremes  
16 was "limited but satisfactory"; Plaintiff's ability to carry out  
17 very short and simple instructions, maintain attention for two-  
18 hour segments, respond appropriately to changes in a routine work  
19 setting, deal with normal work stress, and be aware of normal  
20 hazards and take appropriate precautions was "seriously limited,  
21 but not precluded"; Plaintiff's ability to maintain regular  
22 attendance and be punctual within customary, usually strict  
23 tolerances, sustain an ordinary routine without special  
24 supervision, work in coordination with or proximity to others  
25 without being unduly distracted, make simple work-related  
26 decisions, and complete a normal workday and workweek without  
27 interruptions from psychologically based symptoms was "unable to  
28 meet competitive standards"; and Plaintiff had "no useful ability

1 to function" with respect to being able to perform at a  
2 consistent pace without an unreasonable number and length of rest  
3 periods. (Id.) She stated that Plaintiff would "become  
4 frustrated and angry" if she were pressured at work, had "trouble  
5 sticking to chores at times," "believes she makes wrong decisions  
6 a lot of the time," and had "poor" self-esteem. (AR 285.) She  
7 indicated that Plaintiff was "unable to meet competitive  
8 standards" to understand, remember, and carry out detailed  
9 instructions, set realistic goals, or make plans independently of  
10 others, and she had "no useful ability to function" in dealing  
11 with the stress of semiskilled or skilled work. (Id.) She noted  
12 that Plaintiff had "unlimited or very good" ability to adhere to  
13 basic standards of neatness and cleanliness, "limited but  
14 satisfactory" ability to maintain socially appropriate behavior,  
15 "seriously limited but not precluded" ability to interact  
16 appropriately with the general public, "unable to meet  
17 competitive standards" in her ability to travel to an unfamiliar  
18 place, and "no useful ability to function" in her ability to use  
19 public transportation because she "dislikes being around a lot of  
20 people." (Id.) She noted that Plaintiff "once tried to play  
21 chicken w/ a truck + jumped in front of it." (Id.) She  
22 indicated that Plaintiff had "a low IQ or reduced intellectual  
23 functioning," but when asked to refer to specific test results,  
24 she wrote "none done here." (AR 286.) She indicated that  
25 Plaintiff's impairments would cause her to be absent from work  
26 more than four days a month. (Id.) She noted that Plaintiff  
27 would have difficulty working on a sustained basis because she  
28 was "irritable, stressed out and overwhelmed" and "could not do

1 more than 1 task." (Id.)

2 On October 10, 2010, Plaintiff again saw Dr. Smith. (AR  
3 289.) Dr. Smith noted that Plaintiff had stopped attending AA  
4 meetings "because I think I have a lazy streak in me," but she  
5 was not drinking. (Id.) She stated that she was hearing voices  
6 "off and on," but they were not as strong as they used to be.  
7 (Id.) Plaintiff was "overwhelmed by having to do everything for  
8 her mother." (Id.) Plaintiff reported that she stopped working  
9 in 2005, after her ex-boyfriend hit her in the head with a  
10 bicycle frame, "due to not being able to work and deal with the  
11 voices." (AR 289-90.) She stated that she was "waiting for a  
12 court date for disability." (AR 290.) Dr. Smith noted that  
13 Plaintiff "laughs easily, but at times it seems a little  
14 inappropriate," "complains of chronic low energy 'lazy and  
15 irritable,'" had considered suicide "in the recent past" but had  
16 "no active [suicidal ideation]," had auditory hallucinations  
17 telling her to hurt herself and her mother but was "ignoring the  
18 voices," knew the name of the president and governor but "like  
19 most people, [s]he could not recall the name of the vice  
20 president," could recall "3/3 words at 10 minutes," and  
21 "believe[d] it [was] her living situation" with her mother "that  
22 has affected her mood." (Id.) Dr. Smith helped Plaintiff fill  
23 out an SSI form and noted that Plaintiff spent a "[l]ong time"  
24 filling out the form; she also noted that she "believe[d]  
25 [Plaintiff] needs SSI and with that could perhaps find a  
26 protected part time job" and that "[f]illing out the SSI form  
27 brought out how really disabled she is." (Id.)

28 Notes from Plaintiff's visits to the county mental-health-

1 services office between April and September 2010 for medication  
2 checkups and refills show that Plaintiff was "responding well" to  
3 her medications and "denie[d] most [symptoms] of depression or  
4 anxiety at present." (AR 302-14.)

5 On January 27, 2011, Plaintiff again visited Dr. Smith. She  
6 discussed having "head pain . . . like my brain hurts all the  
7 time" and said she was "still hear[ing] some voices." (AR 332.)  
8 Plaintiff discussed feeling anxious about the status of her SSI  
9 application and reported that taking care of her mother was  
10 "stressful." (Id.) Dr. Smith noted that Plaintiff "relates in a  
11 child-like fashion," "has a difficult time processing  
12 information," and "is not suicidal" but still heard voices. (AR  
13 333.)

14 On March 21, 2011, one month after the ALJ issued his  
15 written decision, Plaintiff visited Dr. Smith. (AR 335.) She  
16 discussed being "upset about having her disability overturned."  
17 (Id.) Dr. Smith made the following notations:

18 It appears that the term "psychiatrically stable" is  
19 really used against her. Once [sic] can be  
20 "psychiatrically stable" and still not able to work.[]  
21 It basicaly [sic] means that she is stable on her  
22 medications and not likely to get significantly better  
23 and her functioning is such that she does not require  
24 hospitalization. Interestingly, she was apparently  
25 denied Social Security even when she was hearing voices.  
26 The vocational worker stated she could wash dishes. The  
27 judge opined that she could work at limited simple tasks  
28 with minimal contact with the public or coworkers. My

1 sense is that this is only a step a way [sic] from a  
2 sheltered workshop. I believe her mental slowness would  
3 prevent her from getting hired on the open labor market.

4 . . . .

5 She is oriented in all spheres. She is able to only  
6 do simple arithmetic on her fingers or counting out loud  
7 and is not able to subtract serial 7's. By counting out  
8 loud, she was able to subtract 20-3. Today she admits to  
9 hearing voices off and on, but they are not that  
10 bothersome. However, to state an opinion, I do not  
11 believe that this is what makes her unable to compete on  
12 the open labor market. It is more her limited  
13 intelligence. She is oriented in all spheres. She  
14 presents in a child-like fashion.

15 The thought processes are consistently slowed down  
16 and concrete and this is stable. She is living with her  
17 mother who pays the rent. She did recall 3/3 words at 5  
18 minutes. Her overall affect is pleasant.

19 I continue to believe that Rhonda is a very low  
20 functioning individual and would never be able to truly  
21 compete on the open labor market. She is ALSO  
22 PSYCHIATRICALY STABLE ie, she is NOT GOING TO CHANGE or  
23 improve. I believe she needs SSI and with that could  
24 perhaps find a protected part time job. As I noted  
25 before, it was sitting with this woman for two hours  
26 filling out the form that the level of her disability  
27 became apparent. I am accused of not being objective.  
28 However, I do not see anywhere else where serial 7's were



1 even attempted. I do not believe that she could  
2 negotiate rent. Her thought processes are slowed down.  
3 Would I hire her to clean for me? Absolutely not. Her  
4 thinking is too slowed down. I could easily find a more  
5 competent laborer. Could she work in a more sheltered  
6 workshop where she is helped and supported? Yes, but  
7 does that mean she is not disabled? I do not have the  
8 answer for that. That is for the judge to determine. I  
9 would note that GAF scores are subjective and the  
10 difference between 40 and 50 is not that significant.  
11 What is significant is her mental slowness and  
12 difficulties with anything [sic] beyond simple arithmetic.  
13 She has wound up living on the street before. Without  
14 the support of her mother, this could occur again. I  
15 question whether she could accomplish all that is  
16 necessary to find work and shelter in particular on her  
17 own. (She could probably obtain free food at churches.)  
18 Once again, this really can only be a subjective  
19 judgment. In my case it is based on many years of  
20 treating mentally ill people and seeing how they manage  
21 (or don't manage) without support.

22 (AR 335-36.)

23 3. Analysis

24 The ALJ found that Plaintiff could perform a full range of  
25 work at all exertional levels, with the nonexertional limitations  
26 that she should be limited to "simple, routine tasks with minimal  
27 contact with public and co-workers." (AR 66.) Leading up to  
28 that finding, the ALJ evaluated Dr. Smith's opinions as follows:

1 Progress notes from [the county mental-health-  
2 services department] from September 2009 to November 2010  
3 encompass the continuing assessments from Dr. Jeffrey<sup>10</sup>  
4 and include more recent assessments from Dr. Nancy Smith.  
5 Dr. Jeffrey's [sic] continues to rate the claimant as  
6 being "psychiatrically stable" and GAF's of 50 on October  
7 2009 and February 2010, respectively. Also, claimant  
8 reported on April 15, 2010 that she last heard voices a  
9 year ago and on June 28, 2010, that Dr. Davis got me  
10 regulated on some medication and I don't hear voices  
11 anymore. Follow up progress notes involving medication  
12 management from September 2009 to January 2010 and from  
13 April 2010 to November 2010 repeatedly report that the  
14 claimant is responding well to the medication regimen and  
15 has no suicidal ideation.

16 Dr. Nancy Smith, however, rated the claimant a GAF  
17 of 40 on June 28, 2010 and opined that the claimant could  
18 not hold down a job due to her slowness and probably  
19 [sic] brain injury from the assault. On October 5, 2010,  
20 Dr. Smith rated the claimant a GAF of 40 and opined that  
21 the claimant is low functioning and would never be able  
22 to compete on the open labor market. Similarly, on  
23 January 27, 2011, Dr. Smith again rated the claimant a  
24 GAF of 40 and would be unable to work. The undersigned  
25 affords these opinions very little weight as they are not  
26 based upon objective evidence and they are inconsistent

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27  
28 <sup>10</sup> The ALJ appears to have referred to Dr. Jeffrey Davis  
by his first name as well as his last.

1 with the numerous progress notes that indicate the  
2 claimant is "psychiatrically stable" and is responding  
3 well to her medication regimen as detailed above.

4 Lastly, Dr. Smith completed a "Mental Residual  
5 Functional Capacity Questionnaire" form on October 5,  
6 2010. Dr. Smith noted the following diagnoses:  
7 depression, nos; psychosis, nos; developmental  
8 disability; obesity; and, a GAF of 50. Dr. Smith opined  
9 a very limited mental residual functional capacity for  
10 the claimant. Dr. Smith rated the claimant as either  
11 seriously limited, but not precluded, unable to meet  
12 competitive standards or no useful ability to function in  
13 11 out of 16 categories of mental abilities needed to do  
14 unskilled work. The undersigned affords this opinion  
15 very little weight as it is not based upon objective  
16 evidence and it is inconsistent with the numerous  
17 progress notes that indicate the claimant is  
18 "psychiatrically stable" and is responding well to her  
19 medication regimen as detailed above. Furthermore, this  
20 medical source statement borders [sic] on advocacy and  
21 appears to be based upon the subjective complaints of the  
22 claimant only.

23 (AR 64 (citations omitted).)

24 As an initial matter, the ALJ's RFC finding limiting  
25 Plaintiff to simple, routine tasks with minimal contact with the  
26 public and coworkers appears to accommodate many of Dr. Smith's  
27 concerns. For example, in her Mental RFC Questionnaire, Dr.  
28 Smith noted that Plaintiff had a "limited but satisfactory"

1 ability to understand and remember worklike procedures and very  
2 short and simple instructions, ask simple questions or request  
3 assistance, accept instructions and respond appropriately to  
4 criticism from supervisors, and get along with coworkers or peers  
5 without unduly distracting them or exhibiting behavioral  
6 extremes, and she was "not precluded" from carrying out very  
7 short and simple instructions and maintaining attention for two-  
8 hour segments (AR 284); these limitations presumably would be  
9 accommodated to some extent by the ALJ's RFC limitation to  
10 simple, repetitive tasks and minimal contact with coworkers and  
11 the public (AR 66). Indeed, the ALJ appears to have given  
12 Plaintiff great benefit of the doubt in limiting her to minimal  
13 contact with coworkers and the public, as nearly all of the  
14 medical evidence in the record, including Dr. Smith's notes,  
15 shows that Plaintiff was pleasant, polite, friendly, and seemed  
16 to get along well with others. (See AR 211-13, 267, 293, 335-  
17 36.) In June 2010, Dr. Smith even described Plaintiff as  
18 "cheerful." (AR 293.)

19 To the extent the ALJ rejected Dr. Smith's opinions, he  
20 provided specific and legitimate reasons, supported by  
21 substantial evidence, for doing so. The ALJ correctly noted that  
22 Dr. Smith's opinions conflicted with the "numerous progress  
23 notes" in the record, including those from Plaintiff's other  
24 treating psychiatrists, Dr. Davis and Dr. Ortiz, and those from  
25 Dr. Smith herself, indicating that Plaintiff's symptoms were  
26 stable and she was responding well to her medications. (AR 64;  
27 see AR 203-04, 209-14, 225, 263-64, 268, 269-74, 292, 294, 295,  
28 296-98, 299-301, 302-14, 316-17); see Bayliss, 427 F.3d at 1216;

1 Connett, 340 F.3d at 874-75; see also 20 C.F.R.  
2 §§ 404.1529(c)(3)(iv) (ALJ may consider effectiveness of  
3 medication in evaluating severity and limiting effects of  
4 impairment), 416.929(c)(3)(iv) (same); Warre v. Comm'r of Soc.  
5 Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments  
6 that can be controlled effectively with medication are not  
7 disabling for the purpose of determining eligibility for [Social  
8 Security] benefits."). Although Dr. Smith diagnosed Plaintiff  
9 with a GAF score of 40 (AR 295), other doctors diagnosed her with  
10 GAF scores of between 50 and 70 (AR 212-13, 282), and Dr. Smith  
11 herself admitted that a GAF assessment was "subjective" and a  
12 difference of 10 points was "not that significant" (AR 336). In  
13 any event, GAF scores "[do] not have a direct correlation to the  
14 severity requirements in the Social Security Administration's  
15 mental disorders listings," and an ALJ may properly disregard a  
16 low GAF score if other substantial evidence supports a finding  
17 that the claimant was not disabled. See Doney v. Astrue, 485 F.  
18 App'x 163, 165 (9th Cir. 2012) (alterations and citations  
19 omitted).

20 The ALJ also permissibly rejected Dr. Smith's opinions that  
21 Plaintiff would "never be able to compete on the open labor  
22 market" and "needs SSI" because they were opinions on Plaintiff's  
23 ultimate disability status, which the ALJ was not obligated to  
24 accept. (AR 64); see 20 C.F.R. §§ 404.1527(d)(1) ("A statement  
25 by a medical source that you are 'disabled' or 'unable to work'  
26 does not mean that we will determine that you are disabled."),  
27 416.927(d)(1) (same); SSR 96-5p, 1996 WL 374183, at \*5  
28 (treating-source opinions that a person is disabled or unable to

1 work "can never be entitled to controlling weight or given  
2 special significance"); see also McLeod v. Astrue, 640 F.3d 881,  
3 885 (9th Cir. 2011) ("A disability is an administrative  
4 determination of how an impairment, in relation to education,  
5 age, technological, economic, and social factors, affects ability  
6 to engage in gainful activity.").

7 The ALJ was also permitted to discount Dr. Smith's limited-  
8 RFC findings and disability opinions because they were  
9 inconsistent with her own treatment notes. (AR 64); see Rollins  
10 v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001) (ALJ permissibly  
11 rejected treating physician's opinion when opinion was  
12 contradicted by or inconsistent with treatment reports); Bayliss,  
13 427 F.3d at 1216; Connett, 340 F.3d at 874-75. As the ALJ noted  
14 (AR 64), Dr. Smith's treatment notes stated that Plaintiff was  
15 doing "better" and responding well to her medication, and her  
16 auditory hallucinations had improved with medication. (See,  
17 e.g., AR 289-95, 332-33.) Such consistently normal or mild  
18 findings fail to support Dr. Smith's opinion that Plaintiff was  
19 so significantly disabled by her mental impairments that she was  
20 unable to, for example, maintain concentration, perform  
21 repetitive tasks, interact with coworkers, or complete a normal  
22 workweek without decompensating. (See AR 282-87.) Dr. Smith  
23 admitted that Plaintiff's auditory hallucinations were "not that  
24 bothersome" and were not the reason she felt Plaintiff was unable  
25 to work. (AR 335.) Instead, she stated that it was Plaintiff's  
26 "limited intelligence" that prevented her from working, even  
27 though she had earlier noted that no test results supported her  
28 findings that Plaintiff had a low IQ or reduced intellectual

1 functioning. (AR 283, 286.) Although Dr. Smith, in response to  
2 the ALJ's opinion, stated that "psychiatrically stable" meant  
3 only that Plaintiff's condition was unlikely to change (AR 335-  
4 36), the medical evidence showed that she was in fact stable and  
5 her symptoms were well controlled with medication. The ALJ was  
6 therefore entitled to reject Dr. Smith's RFC finding. See Payne  
7 v. Astrue, No. 3:11-cv-05320-BHS-KLS, 2011 WL 8878916, at \*7  
8 (W.D. Wash. Dec. 19, 2011) (finding that ALJ properly rejected  
9 treating psychiatrist's opinion that plaintiff was severely  
10 depressed because plaintiff "was found to be psychiatrically  
11 stable later that month," noting that while doctor's statement  
12 that plaintiff was "'psychiatrically stable' without any further  
13 comment[] does not necessarily show [she] is without significant  
14 functional limitations, but rather may merely indicate the  
15 condition was unchanging at the time," doctor also noted at the  
16 same time that "plaintiff was 'doing well on' her medication,"  
17 "thus show[ing] that not only was plaintiff considered to be  
18 doing well, but she was stable at that level"), accepted by 2012  
19 WL 122867 (W.D. Wash. Jan. 17, 2012). Moreover, the ALJ was  
20 entitled to reject Dr. Smith's opinions to the extent they were  
21 premised on Plaintiff's subjective complaints (AR 66), which, as  
22 explained in section V(B) below, he properly rejected. See  
23 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (when  
24 ALJ properly discounted claimant's credibility, he was "free to  
25 disregard" doctor's opinion that was premised on claimant's  
26 subjective complaints); Morgan v. Comm'r of Soc. Sec. Admin., 169  
27 F.3d 595, 602 (9th Cir. 1999) (when physician's opinion of  
28 disability premised "to a large extent" upon claimant's own

1 accounts of symptoms, limitations may be disregarded if  
2 complaints have been "properly discounted").

3       The ALJ was also entitled to rely on the opinions of  
4 consulting examiner Dr. Paladino and state-agency psychiatrists  
5 Dr. Leaf and Dr. Loomis to reject Dr. Smith's opinions. (AR 63,  
6 67.) As the ALJ noted, Drs. Paladino's and Leaf's opinions were  
7 consistent with the objective evidence, including the opinions  
8 and treatment notes of Plaintiff's other treating psychiatrist,  
9 Dr. Davis, as well as with each other. (AR 63-64); see Thomas,  
10 278 F.3d at 957 ("The opinions of non-treating or non-examining  
11 physicians may also serve as substantial evidence when the  
12 opinions are consistent with independent clinical findings or  
13 other evidence in the record."); see also 20 C.F.R. §§  
14 404.1527(c)(4) (ALJ will generally give more weight to opinions  
15 that are "more consistent . . . with the record as a whole"),  
16 416.927(c)(4) (same). For example, Dr. Paladino's findings that  
17 Plaintiff was polite, pleasant, and friendly, her concentration  
18 and attention were acceptable for two-hour increments, and she  
19 would be able to process simple job instructions and respond to  
20 simple changes in a routine work setting (AR 209-14) were  
21 consistent with Drs. Davis's and Smith's findings in the  
22 narrative reports that Plaintiff had a polite and friendly  
23 demeanor, her symptoms were controlled with medication, and she  
24 could perform simple tasks (see, e.g., AR 263-64, 268, 269-74,  
25 292, 294, 295, 296-98, 299-301, 302-14, 316-17). Dr. Leaf  
26 similarly found that Plaintiff had moderate difficulties in  
27 maintaining concentration, persistence, and pace; mild  
28 restriction of activities of daily living and maintaining social



1 functioning; and no episodes of decompensation of an extended  
2 duration. (AR 247.) And Drs. Paladino, Loomis, and Leaf  
3 reviewed Plaintiff's full medical records before rendering their  
4 opinions, which also supports the ALJ's finding that their  
5 opinions were entitled to more weight. (AR 214, 249); see 20  
6 C.F.R. §§ 404.1527(c)(6) (extent to which doctor is "familiar  
7 with the other information in [claimant's] case record" is  
8 relevant factor in determining weight given to opinion),  
9 416.927(c)(6) (same). Dr. Smith, on the other hand, had been  
10 treating Plaintiff for only six months and had apparently seen  
11 her only a handful of times at the time she filled out the RFC  
12 assessment, in October 2010, and there is no indication in the  
13 record that Dr. Smith reviewed Plaintiff's full medical record  
14 before rendering her opinion. (See AR 282-87, 289, 292, 294.)  
15 Although Dr. Paladino examined Plaintiff in October 2006, before  
16 her alleged onset date of April 25, 2008, the medical evidence  
17 shows that Plaintiff's condition did not change significantly  
18 between 2006 and 2008. Plaintiff reported that her problems  
19 began in 2005, when she was abused by her ex-boyfriend, attempted  
20 suicide by walking in front of a truck, and began hearing voices  
21 (see AR 20-21, 187, 225, 231, 266, 289-90, 292); from 2006 on,  
22 her doctors consistently reported that she was doing better on  
23 medication, and she frequently denied hearing voices or having  
24 any other symptoms of depression or anxiety (AR 263-64, 268, 269-  
25 74, 292, 294, 295, 296-98, 299-301, 302-14, 316-17). The ALJ's  
26 reliance on Drs. Paladino's, Loomis's, and Leaf's opinions was  
27 therefore proper.

28 Plaintiff also challenges the ALJ's rejection of Dr. Smith's

1 opinion on the ground that it "[borders] on advocacy." (AR 64;  
2 J. Stip. at 7-8.) An ALJ may not reject a treating physician's  
3 opinion based on the assumption that a treating physician has a  
4 natural tendency to advocate for her patients but may do so if  
5 there is evidence that the physician is in fact acting as an  
6 advocate. See Lester, 81 F.3d at 832 ("The [Commissioner] may  
7 not assume that doctors routinely lie in order to help their  
8 patients collect disability benefits" but "may introduce evidence  
9 of actual improprieties . . . ."); Matney v. Sullivan, 981 F.2d  
10 1016, 1020 (9th Cir. 1992) (holding that ALJ properly determined  
11 treating physician's opinions "were entitled to less weight"  
12 because evidence showed that physician "had agreed to become an  
13 advocate and assist in presenting a meaningful petition for  
14 Social Security benefits"); Saelee v. Chater, 94 F.3d 520, 522  
15 (9th Cir. 1996) (ALJ properly discounted treating physician's  
16 report obtained solely for purposes of administrative hearing);  
17 Buckner-Larkin v. Astrue, 450 F. App'x 626, 627 (9th Cir. 2011)  
18 (ALJ properly discounted treating physician's opinion on ground  
19 that he "appeared to be more of an advocate than an objective  
20 examiner" when finding was "supported by the record"). Here, the  
21 ALJ's finding that Dr. Smith acted as an advocate was supported  
22 by the record, and thus it was proper. As the ALJ noted, Dr.  
23 Smith's dramatically limited RFC finding was inconsistent with  
24 the medical evidence, including her own treatment notes,  
25 suggesting that it was not objective. (AR 64.) Dr. Smith  
26 repeatedly noted the status of Plaintiff's disability  
27 application, which she had helped Plaintiff fill out (AR 290),  
28 and often stated that she believed Plaintiff "needs SSI," which

1 suggested an intent to advocate. (See AR 290-95, 332-33.)  
2 Indeed, after the ALJ issued his written decision, Dr. Smith  
3 wrote another report specifically disputing the ALJ's conclusions  
4 and reiterating her belief that Plaintiff should be awarded SSI  
5 benefits. (AR 335-36.) The ALJ's rejection of Dr. Smith's  
6 opinion because it "[bordered] on advocacy" was proper. Matney,  
7 981 F.2d at 1020; see also Bagoyan Sulakhyan v. Astrue, 456 F.  
8 App'x 679, 682 (9th Cir. 2011) (ALJ properly rejected physician's  
9 reports that "contained an advocate's tone rather than that of a  
10 treating physician").

11 Plaintiff is not entitled to remand on this ground.

12 B. The ALJ Properly Assessed Plaintiff's Credibility

13 Plaintiff argues that the ALJ failed to articulate clear and  
14 convincing reasons for rejecting Plaintiff's subjective  
15 testimony. (J. Stip. at 17-19, 22-24.) Reversal is not  
16 warranted on this basis.

17 An ALJ's assessment of pain severity and claimant  
18 credibility is entitled to "great weight." See Weetman v.  
19 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779  
20 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to  
21 believe every allegation of disabling pain, or else disability  
22 benefits would be available for the asking, a result plainly  
23 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674  
24 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks and  
25 citation omitted). In evaluating a claimant's subjective symptom  
26 testimony, the ALJ engages in a two-step analysis. See  
27 Lingenfelter, 504 F.3d at 1035-36. "First, the ALJ must  
28 determine whether the claimant has presented objective medical

1 evidence of an underlying impairment [that] could reasonably be  
2 expected to produce the pain or other symptoms alleged." Id. at  
3 1036 (internal quotation marks omitted). If such objective  
4 medical evidence exists, the ALJ may not reject a claimant's  
5 testimony "simply because there is no showing that the impairment  
6 can reasonably produce the degree of symptom alleged." Smolen,  
7 80 F.3d at 1282 (emphasis in original). When the ALJ finds a  
8 claimant's subjective complaints not credible, the ALJ must make  
9 specific findings that support the conclusion. See Berry v.  
10 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent affirmative  
11 evidence of malingering, those findings must provide "clear and  
12 convincing" reasons for rejecting the claimant's testimony.  
13 Lester, 81 F.3d at 834. If the ALJ's credibility finding is  
14 supported by substantial evidence in the record, the reviewing  
15 court "may not engage in second-guessing." Thomas, 278 F.3d at  
16 959.

17 In two function reports dated May 30, 2009, Plaintiff stated  
18 that her daily activities consisted of taking her medications,  
19 cleaning up the apartment she shared with her mother, and going  
20 for walks.<sup>11</sup> (AR 135, 144.) She also cooked meals for 30 to 45  
21 minutes a day on a daily basis and fed and walked her dog. (AR  
22 136-37, 144-45.) She spent approximately three to four hours  
23 cooking, cleaning, and doing laundry each day and did not need  
24 any help. (AR 137, 146.) She also did yard work and shopped for  
25 food for about one hour once a month. (AR 138, 145.) She stated

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27 <sup>11</sup> The first form Plaintiff filled out is a Third Party  
28 Function Report form, but Plaintiff filled it out herself. (See  
AR 135.)

1 that she went outside "all the time" and was able to go out  
2 alone. (AR 138, 146.) She stated that she was not able to  
3 handle money in any way because she did not have a job or bank  
4 account. (Id.) She listed "hook and latch" as a hobby but noted  
5 that she "can't read very good" and did not socialize often  
6 except to attend mental-health therapy. (AR 139-40, 147-48.)  
7 She stated that she had difficulty with talking, hearing, memory,  
8 completing tasks, concentration, understanding, and following  
9 instructions; she could not follow written instructions "to [sic]  
10 good"; and she "ha[d] to be reminded" to follow spoken  
11 instructions. (AR 140, 148-49.) She stated that she  
12 "respect[ed]" authority figures but did not handle stress and  
13 changes in routine "to will [sic]." (AR 141, 149.)

14 On September 27, 2010, Plaintiff responded to a series of  
15 written questions regarding her ability to work. (AR 183-90.)  
16 She stated that she stopped working in "2006-2007" because she  
17 was "unable to mentally handle [her] position." (AR 184.) She  
18 had not looked for other work since then but had attended mental-  
19 health counseling. (Id.) She lived with her mother and a  
20 roommate "and [could] function daily"; her daily activities  
21 included riding a bicycle, walking, doing crafts, and crocheting.  
22 (Id.) She socialized with her mother, a friend, a cousin, and  
23 other family members. (Id.) She stated that since she filed her  
24 disability claim, her condition had changed in the following  
25 ways: "no concentration, suicidal tendencies, hallucination,  
26 hyperactive." (AR 185.) She stated that she attended counseling  
27 and was prescribed medications to address her symptoms. (Id.)  
28 She also stated that she suffered from chronic headaches but had

1 never seen a doctor for them, instead treating them with over-  
2 the-counter medication. (AR 186.) She stated that she could  
3 never lift, carry, or pull even 10 pounds, could stand or walk  
4 for less than two hours in an eight-hour day, could not sit  
5 without alternating positions, and was limited in her ability to  
6 push and pull in both her upper and lower body. (AR 187.)  
7 Plaintiff stated that she was "always fatigued [and] irritable"  
8 and suffered from panic attacks and anxiety caused by stress.  
9 (AR 188.) She stated that her medication "limits ability to  
10 function." (Id.) She preferred to walk rather than use public  
11 transportation because of "paranoia," did not interact well with  
12 supervisors and coworkers, and was "confrontational" in dealing  
13 with the public. (AR 189-90.) She stated that she was not able  
14 to recall or comprehend technical or complex job instructions,  
15 could not concentrate for any extended time, and could not deal  
16 with daily pressures or "money issues." (AR 190.)

17 At the February 2, 2011 hearing before the ALJ, Plaintiff  
18 testified that she suffered from depression and had attempted  
19 suicide once in the past two or three years but was not  
20 hospitalized and did not go to an ER. (AR 16.) She stated that  
21 she liked "to be with others" and was close to trusted family and  
22 friends. (Id.) She stated that she heard voices telling her to  
23 kill or hurt somebody and had panic attacks caused by stress.  
24 (AR 17.) She had not done drugs since 2006 and had not consumed  
25 alcohol since 2006 except for one "binge" four months before the  
26 hearing. (AR 17-18.) She lived with her mother and during the  
27 day would get up and go outside for a cigarette, drink coffee,  
28 walk her dog, and lie down in the afternoon because of chronic

1 headaches. (AR 18.) She did not take any medicine for the  
2 headaches. (Id.) She watched TV and would read "every once in a  
3 while," helped her mom clean the house, cooked "a little bit,"  
4 did not "really" do any socializing, and could go "uptown" to do  
5 grocery shopping by herself. (AR 19.)

6 Plaintiff testified that her problems began in 2005, when  
7 she was beaten by her ex-boyfriend and then attempted suicide by  
8 walking in front of a truck. (AR 20-21.) She began hearing  
9 voices after that. (AR 20.) She then began taking medications,  
10 from which she had no side effects and which helped with her  
11 hallucinations and "control[led] [her] moods." (AR 20-24.) She  
12 stated that she had problems concentrating and remembering things  
13 and would have panic attacks when stressed. (AR 23-25.) She  
14 also claimed, apparently for the first time, to be having visual  
15 hallucinations. (AR 25.) She last worked in 2006, "doing in-  
16 home health services" for her mother and another lady. (AR 23.)  
17 She stated that being around people did not affect her panic  
18 attacks or hallucinations. (AR 25.)

19 The ALJ found that Plaintiff's impairments "could reasonably  
20 be expected to cause the alleged symptoms," but her "statements  
21 concerning the intensity, persistence and limiting effects of  
22 these symptoms are not credible to the extent they are  
23 inconsistent with" Plaintiff's RFC. (AR 67.) He noted that  
24 Plaintiff received "limited and conservative treatment" for her  
25 symptoms and that the majority of the objective evidence showed  
26 that Plaintiff "is stable and is progressing well with the  
27 medication that is prescribed her." (Id.) He also noted that  
28 Plaintiff's daily activities "show a level of functioning that

1 would not preclude the claimant from at least performing simple,  
2 routine tasks with minimal contact with the public and co-  
3 workers." (Id.) The ALJ gave clear and convincing reasons for  
4 discounting Plaintiff's credibility to the extent it was  
5 inconsistent with her RFC.

6 The ALJ's finding that Plaintiff's alleged symptoms were not  
7 supported by objective evidence was a clear and convincing reason  
8 for discounting her credibility. (AR 67); see Carmickle, 533  
9 F.3d at 1161 ("Contradiction with the medical record is a  
10 sufficient basis for rejecting the claimant's subjective  
11 testimony."); Lingenfelter, 504 F.3d at 1040 (in determining  
12 credibility, ALJ may consider "whether the alleged symptoms are  
13 consistent with the medical evidence"); Burch v. Barnhart, 400  
14 F.3d 676, 681 (9th Cir. 2005) ("Although lack of medical evidence  
15 cannot form the sole basis for discounting pain testimony, it is  
16 a factor that the ALJ can consider in his credibility  
17 analysis."); Kennelly v. Astrue, 313 F. App'x 977, 979 (9th Cir.  
18 2009) (same). As the ALJ pointed out, "the bulk of the progress  
19 notes" from Plaintiff's treating doctors showed that she was  
20 "stable and progressing well with the medication that is  
21 prescribed her." (AR 67; see AR 203-04, 209-14, 225, 263-64,  
22 268, 269-74, 292, 294, 295, 296-98, 299-301, 302-14, 316-17.)  
23 Her claims that her medication was not totally effective and  
24 caused side effects that limited her ability to function (AR 23-  
25 26, 188-90) also conflicted with the medical evidence showing  
26 that she tolerated her medications well and had no notable side  
27 effects (AR 263-68, 269-74, 296-301, 302-14; see also AR 20-24  
28 (denying side effects and stating that medication helped control



1 moods)). Moreover, Plaintiff was noted by her doctors to be  
2 pleasant, polite, friendly, and able to get along well with  
3 others. (See AR 213-13, 267, 293, 335-36.) Indeed, Plaintiff  
4 told Dr. Smith that she did not attend AA meetings because she  
5 was "lazy." (AR 289, 290.) This evidence conflicted with  
6 Plaintiff's claims that she was "confrontational," too paranoid  
7 to go out in public, and unable to do any kind of work activity  
8 because of her mental illness. (AR 16-25, 183-90.) Plaintiff  
9 also claimed at the hearing to have had visual hallucinations,  
10 even though no evidence anywhere in the record suggests that she  
11 ever complained of them before. (AR 25; see AR 128, 212-14, 231,  
12 263-68, 276, 283, 289-301, 332-36.) The ALJ thus properly  
13 discounted Plaintiff's testimony to the extent that it conflicted  
14 with the objective medical evidence.

15       The ALJ was also entitled to discount Plaintiff's  
16 credibility because her claims of disability conflicted with her  
17 reports as to her daily activities. See Smolen, 80 F.3d at 1284  
18 (ALJ may use "ordinary techniques of credibility evaluation,"  
19 such as "prior inconsistent statements concerning the symptoms,  
20 and other testimony by the claimant that appears less than  
21 candid"); Thomas, 278 F.3d at 958-59 (in assessing credibility,  
22 ALJ may consider inconsistencies either in claimant's testimony  
23 or between testimony and conduct); cf. Molina, 674 F.3d at 1113  
24 ("Even where [claimant's] activities suggest some difficulty  
25 functioning, they may be grounds for discrediting the claimant's  
26 testimony to the extent that they contradict claims of a totally  
27 debilitating impairment."). The ALJ noted that Plaintiff's daily  
28 activities "show a level of functioning that would not preclude

1 the claimant from at least performing simple, routine tasks with  
2 minimal contact with the public and co-workers." (AR 67.)  
3 Plaintiff reported that she was able to cook, do laundry, clean  
4 the house, go for frequent walks, go grocery shopping, do yard  
5 work, and socialize with friends and family. (AR 135-49, 183-  
6 90.) The record also showed that she took care not only of  
7 herself but of her mother as well.<sup>12</sup> (AR 23, 210, 249, 289-90,  
8 292-93, 294-95, 332.) That Plaintiff's allegations of disabling  
9 mental illness were inconsistent with her daily activities was a  
10 valid reason for the ALJ to discount her testimony. See Molina,  
11 674 F.3d at 1113 (ALJ properly found that plaintiff's extensive  
12 daily activities, "including walking her two grandchildren to and  
13 from school, attending church, shopping, and taking walks,  
14 undermined her claims that she was incapable of being around  
15 people without suffering from debilitating panic attacks").

16 Because the ALJ gave clear and convincing reasons for his  
17 credibility finding and those reasons were supported by  
18 substantial evidence, the Court "may not engage in  
19 second-guessing." Thomas, 278 F.3d at 959 (citation omitted).  
20 Plaintiff is not entitled to reversal on this claim.

21 **VI. CONCLUSION**

22 Consistent with the foregoing, and pursuant to sentence four  
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26  
27 <sup>12</sup> Given these activities, Plaintiff's claim that she  
28 could not lift or carry even 10 pounds (AR 187) was not credible,  
particularly given that she had no physical impairments other  
than obesity (AR 203, 211, 225).

1 of 42 U.S.C. § 405(g),<sup>13</sup> IT IS ORDERED that judgment be entered  
2 AFFIRMING the decision of the Commissioner and dismissing this  
3 action with prejudice. IT IS FURTHER ORDERED that the Clerk  
4 serve copies of this Order and the Judgment on counsel for both  
5 parties.

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8 DATED: July 12, 2013

**JEAN ROSENBLUTH**

JEAN ROSENBLUTH  
U.S. Magistrate Judge

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26 <sup>13</sup> This sentence provides: "The [district] court shall  
27 have power to enter, upon the pleadings and transcript of the  
28 record, a judgment affirming, modifying, or reversing the  
decision of the Commissioner of Social Security, with or without  
remanding the cause for a rehearing."