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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MELANIE OSACAR,  
Plaintiff,  
vs.  
CAROLYN W. COLVIN,  
Acting Commissioner of Social  
Security,  
Defendant.

} No. CV-12-5040-LRS  
} **ORDER GRANTING**  
} **DEFENDANT’S MOTION FOR**  
} **JUDGMENT, *INTER ALIA***  
}  
}  
}  
}

**BEFORE THE COURT** are Plaintiff's Motion For Summary Judgment (ECF No. 14) and the Defendant's Motion For Summary Judgment (ECF No. 20).

**JURISDICTION**

Melanie Osacar, Plaintiff, applied for Title XVI Supplemental Security Income benefits ("SSI") on May 22, 2007. The application was denied initially and on reconsideration. Plaintiff timely requested a hearing and a hearing was held on April 7, 2010, before Administrative Law Judge (ALJ) Moira Ausmens. Plaintiff, represented by counsel, appeared and testified at this hearing via video. Thomas Polsin also testified as a Vocational Expert (VE). On July 27, 2010, the ALJ issued a decision denying benefits. The Appeals Council denied a request for review and the ALJ's decision became the final decision of the Commissioner. This decision is appealable to district court pursuant to 42 U.S.C. §1383(c)(3).

**ORDER GRANTING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT- 1**

1 **STATEMENT OF FACTS**

2 The facts have been presented in the administrative transcript, the ALJ's  
3 decision, the Plaintiff's and Defendant's briefs, and will only be summarized here.  
4 At the time of the administrative hearing, Plaintiff was 25 years old. She has a  
5 GED (general equivalency degree) and no past relevant work experience. Plaintiff  
6 alleges disability since July 24, 2006, due to mental impairments.

7  
8 **STANDARD OF REVIEW**

9 "The [Commissioner's] determination that a claimant is not disabled will be  
10 upheld if the findings of fact are supported by substantial evidence...." *Delgado v.*  
11 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983). Substantial evidence is more than a  
12 mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975),  
13 but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th  
14 Cir. 1989); *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573,  
15 576 (9th Cir. 1988). "It means such relevant evidence as a reasonable mind might  
16 accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389,  
17 401, 91 S.Ct. 1420 (1971). "[S]uch inferences and conclusions as the  
18 [Commissioner] may reasonably draw from the evidence" will also be upheld.  
19 *Beane v. Richardson*, 457 F.2d 758, 759 (9th Cir. 1972); *Mark v. Celebrezze*, 348  
20 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a  
21 whole, not just the evidence supporting the decision of the Commissioner.  
22 *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *Thompson v. Schweiker*, 665  
23 F.2d 936, 939 (9th Cir. 1982).

24 It is the role of the trier of fact, not this court to resolve conflicts in  
25 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one  
26 rational interpretation, the court must uphold the decision of the ALJ. *Allen v.*  
27 *Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).

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1 A decision supported by substantial evidence will still be set aside if the  
2 proper legal standards were not applied in weighing the evidence and making the  
3 decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432, 433  
4 (9th Cir. 1987).

## 6 ISSUES

7 Plaintiff argues the ALJ erred by: 1) improperly evaluating the medical  
8 opinion evidence; 2) improperly discounting Plaintiff's credibility; and 3)  
9 presenting a hypothetical to the VE which did not properly take into account all of  
10 the Plaintiff's limitations.

## 12 DISCUSSION

### 13 SEQUENTIAL EVALUATION PROCESS

14 The Social Security Act defines "disability" as the "inability to engage in  
15 any substantial gainful activity by reason of any medically determinable physical  
16 or mental impairment which can be expected to result in death or which has lasted  
17 or can be expected to last for a continuous period of not less than twelve months."  
18 42 U.S.C. §1382c(a)(3)(A). The Act also provides that a claimant shall be  
19 determined to be under a disability only if his impairments are of such severity  
20 that the claimant is not only unable to do his previous work but cannot,  
21 considering his age, education and work experiences, engage in any other  
22 substantial gainful work which exists in the national economy. *Id.*

23 The Commissioner has established a five-step sequential evaluation process  
24 for determining whether a person is disabled. 20 C.F.R. §416.920; *Bowen v.*  
25 *Yuckert*, 482 U.S. 137, 140-42, 107 S.Ct. 2287 (1987). Step one determines if he  
26 is engaged in substantial gainful activities. If he is, benefits are denied. 20 C.F.R.  
27 §416.920(a)(4)(i). If he is not, the decision-maker proceeds to step two, which

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1 determines whether the claimant has a medically severe impairment or  
2 combination of impairments. 20 C.F.R. §416.920(a)(4)(ii). If the claimant does  
3 not have a severe impairment or combination of impairments, the disability claim  
4 is denied. If the impairment is severe, the evaluation proceeds to the third step,  
5 which compares the claimant's impairment with a number of listed impairments  
6 acknowledged by the Commissioner to be so severe as to preclude substantial  
7 gainful activity. 20 C.F.R. §416.920(a)(4)(iii); 20 C.F.R. § 404 Subpart P, App. 1.  
8 If the impairment meets or equals one of the listed impairments, the claimant is  
9 conclusively presumed to be disabled. If the impairment is not one conclusively  
10 presumed to be disabling, the evaluation proceeds to the fourth step which  
11 determines whether the impairment prevents the claimant from performing work  
12 he has performed in the past. If the claimant is able to perform his previous work,  
13 he is not disabled. 20 C.F.R. §416.920(a)(4)(iv). If the claimant cannot perform  
14 this work, the fifth and final step in the process determines whether he is able to  
15 perform other work in the national economy in view of his age, education and  
16 work experience. 20 C.F.R. §416.920(a)(4)(v).

17 The initial burden of proof rests upon the claimant to establish a prima facie  
18 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921  
19 (9th Cir. 1971). The initial burden is met once a claimant establishes that a  
20 physical or mental impairment prevents her from engaging in his previous  
21 occupation. The burden then shifts to the Commissioner to show (1) that the  
22 claimant can perform other substantial gainful activity and (2) that a "significant  
23 number of jobs exist in the national economy" which claimant can perform. *Kail*  
24 *v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

### 25 26 **ALJ'S FINDINGS**

27 The ALJ found that Plaintiff has the following severe impairments: anxiety

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1 disorder, not otherwise specified, with reports of panic episodes; trichotillomania;  
2 personality disorder, not otherwise specified; and a history of substance abuse  
3 disorder with ongoing alcohol use. The ALJ found that Plaintiff does not have an  
4 impairment or combination of impairments that meets or medically equals any of  
5 the impairments listed in 20 C.F.R. § 404 Subpart P, App. 1. The ALJ found that  
6 plaintiff has the residual functional capacity (RFC) to perform a full range of  
7 work at all exertional levels, but with the following non-exertional limitations:  
8 mental limitations that preclude her from the performance of more than simple  
9 routine tasks and preclude her from working in a setting with more than superficial  
10 contact with the general public and co-workers. Based on Plaintiff's RFC, age,  
11 educational level and work experience, and the testimony of VE Thomas Polsin,  
12 the ALJ found there are jobs that exist in significant numbers in the national  
13 economy which the Plaintiff is capable of performing, specifically bakery helper,  
14 warehouse laborer/laborer, stores; industrial cleaner; and small parts assembler.  
15 Accordingly, the ALJ concluded the Plaintiff is not disabled.

#### 16 17 **MEDICAL OPINION EVIDENCE/RFC**

18 The Commissioner must provide "clear and convincing reasons" for  
19 rejecting the uncontradicted opinion of an examining physician. The opinion of an  
20 examining doctor, even if contradicted by another doctor, can only be rejected for  
21 "specific and legitimate reasons" that are supported by substantial evidence in the  
22 record. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)(citations omitted).

23 Plaintiff contends the ALJ erroneously concluded that psychologist Roland  
24 Dougherty, Ph.D., opined that Plaintiff had only moderate impairments. Dr.  
25 Dougherty first examined the Plaintiff in September 2006 as part of a "Social  
26 Security disability evaluation." At that time, Plaintiff reported she had three  
27 anxiety attacks in the last six weeks, with each attack lasting up to thirty minutes.

#### 28 **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT- 5**

1 (Tr. at p. 198). Dr. Dougherty offered the following “Medical Source Statement:”

2 Melanie became pleasant and cooperative with me after  
3 some initial tension and anxiety. Her verbal skills are  
4 good. She reports a history of very good academic  
5 functioning in her earlier years and her intelligence  
6 appears to be good. She should be able to carry out  
7 most practical job-related skills adequately. Her greatest  
8 difficulties are likely to be interpersonal. She is extremely  
9 concerned about her appearance and [if] she is not able  
10 to alter her trichotillomania, this may continue to be an  
11 obstacle. She is also generally tense in relationships and  
12 counseling should be helpful in this area. She appears to  
13 be committed to taking care of two younger children  
14 despite the stress involved. I believe that she would like  
15 to continue her schooling and should be able to do  
16 somewhat better as she matures, with some psychotherapeutic  
17 assistance.

18 (Tr. at p. 205).

19 Dr. Dougherty assigned Plaintiff a Global Assessment of Functioning  
20 (GAF) score of 51. A GAF score between 51 and 60 indicates “moderate  
21 symptoms” or “moderate” difficulty in social, occupational, or school functioning.  
22 *American Psychiatric Ass’n, Diagnostic & Statistical Manual of Mental  
23 Disorders*, (4<sup>th</sup> ed. Text Revision 2000)(DSM-IV-TR).

24 Dr. Dougherty saw the Plaintiff again in March 2009. Plaintiff was referred  
25 for a psychological evaluation by her children’s social worker. Dr. Dougherty’s  
26 “[a]ssistance was sought in determining [Plaintiff’s] psychological status and its  
27 implication for case planning.” (Tr. at p. 292). Plaintiff reported that she was  
28 “doing well emotionally” and that she did not “generally suffer from depression or  
anxiety,” although “[s]he gets anxious in very large crowds or in a busy working  
environment.” (Tr. at p. 296). Plaintiff reported “some difficulties with social  
discomfort though she is not likely to be generally socially isolated or withdrawn  
and she may speak with some others with relative ease.” (Tr. at p. 299). Dr.  
Dougherty considered Plaintiff’s “prognosis **as a parent** to be guarded.” (Tr. at p.  
302)(Emphasis added). According to him:

There is some evidence of an underlying anxiety disorder

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1 resulting in rather extreme social discomfort and trichotillomania.  
2 I believe that a psychiatric evaluation is in order to determine  
3 whether medication might be useful to her, if she becomes open  
4 to it. I also believe that she needs to be in long-term, weekly  
5 psychotherapy to address these sorts of issues noted above.  
6 Only clear evidence of progress in therapy would change her  
7 prognosis appreciably. Her excessive defensiveness suggests  
8 that a goal-directed treatment approach may be useful at first.  
9 It may be some time before she is able to trust her counselor  
10 adequately for real progress to be made, though superficial  
11 compliance may be expected at first. Hopefully, the clinical  
12 hypotheses noted above may be of use to her therapist in  
13 planning and conducting therapy.

14 (Tr. at p. 302).

15 Dr. Dougherty opined that Plaintiff's GAF was 50 (Tr. at p. 301). A GAF  
16 score of 41-50 means "serious" symptoms or "serious" impairment in either social,  
17 occupational, or school functioning. A score of 50 is right at the borderline  
18 between "moderate" and "serious" impairment. In 2009, Dr. Dougherty was  
19 evaluating Plaintiff's functioning as a parent, whereas in 2006, he evaluated her  
20 ability to function in the workplace. Furthermore, there is no indication in the  
21 record whether the Plaintiff subsequently underwent a psychiatric evaluation, was  
22 prescribed and began taking medication, or underwent therapy, all as  
23 recommended by Dr. Dougherty. And finally, Dr. Dougherty made no  
24 comparison between the results of his 2006 evaluation and his 2009 evaluation,  
25 and he did not indicate, expressly or implicitly, that Plaintiff's mental condition  
26 had deteriorated since 2006.

27 In April of 2007, Plaintiff was the subject of an initial assessment by Central  
28 Washington Comprehensive Mental Health (CWCMH). Nina Rapisarda, M.S.W.,  
opined Plaintiff's current GAF was 44, but she did not meet the "access to care  
criteria" because "[h]er depressive symptoms are not significant enough to warrant  
a Major Depressive disorder diagnosis and Anxiety is not currently a diagnosis  
that currently meets access to care," and "[s]he does not have any discernable  
PTSD [post-traumatic stress disorder] symptoms." (Tr. at p. 265).

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1 In June of 2009, Plaintiff was the subject of an intake assessment by Central  
2 Washington Comprehensive Mental Health (CWCMH). Consistent with Dr.  
3 Dougherty’s 2009 recommendations, and possibly pursuant thereto, it was noted  
4 that Plaintiff “would benefit from a psychiatric evaluation for possible medical  
5 management, . . . bi-weekly to monthly individual therapy and possible weekly . . .  
6 group.” (Tr. at p. 309). The intake assessors, Katherine Schorman, M.A., and  
7 Deborah Blaine, M.S., opined that Plaintiff’s current GAF was 45 and that this had  
8 been her highest GAF in the past year. (Tr. at p. 309). This was, however, only an  
9 intake assessment. The Plaintiff was discharged at intake because she did not  
10 meet “access to care standards.” Instead, she was referred to Catholic Family  
11 Services for possible therapy.

12 In March 2010, Plaintiff was the subject of an “Adult Intake Assessment” at  
13 Catholic Family Services (CFS). This was court-ordered for “anger management”  
14 as a result of a domestic violence incident between Plaintiff and her boyfriend at  
15 the time. (Tr. at p. 312). Plaintiff indicated she was seeking the “proper therapy”  
16 she needed. (Tr. at p. 312). The CFS clinician, Jennifer Obeid-Campbell, MS.,  
17 indicated Plaintiff’s GAF was 41 because she “is unable to maintain employment,  
18 has no friends, per her report, and is unable to manage her emotions . . . prefers not  
19 to leave her home and has poor interpersonal skills.” (Tr. at p. 320).

20 The ALJ properly discounted the GAF assessments by CWCMH and CFS.  
21 The ALJ properly noted they were the “result[] of . . . first-time intake evaluations  
22 without the benefit of review of any historical treating source medical records.  
23 (Tr. at p. 23). Additionally, based on the discussion set forth above regarding the  
24 differences between Dr. Dougherty’s 2006 and 2009 evaluations, and the purpose  
25 of the 2009 evaluation, substantial evidence supports the ALJ’s conclusion that  
26 the GAF assessments by CWCMH and CFS were inconsistent with Dr.  
27 Dougherty’s opinion. (Tr. at p. 24). The ALJ’s RFC finding is consistent with Dr.

28  
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1 Dougherty’s 2006 disability evaluation. Furthermore, it is not inconsistent with  
2 his 2009 evaluation of Plaintiff’s ability to function as a parent.<sup>1</sup>

3 In October 2006, Sharon Underwood, Ph.D., completed a “Psychiatric  
4 Review Technique” form for Disability Determination Services (DDS) based on  
5 the record before her, presumably including the evaluation completed by Dr.  
6 Dougherty in September 2006. Part of the form was a “Mental Residual  
7 Functional Capacity Assessment” in which Dr. Underwood opined that Plaintiff  
8 was “moderately limited” in her ability to get along with coworkers or peers  
9 without distracting them or exhibiting behavioral extremes, “moderately limited”  
10 in her ability to accept instructions and respond appropriately to criticism from  
11 supervisors, and “markedly limited” in her “ability to interact appropriately with  
12 the general public.” (Tr. at p. 221). This assessment is not inconsistent with  
13 anything reported or opined by Dr. Dougherty and, more importantly, is consistent  
14 with the RFC found by the ALJ: mental limitations that preclude her from the  
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16 <sup>1</sup> It is noted that the recently released Fifth Edition of the *American*  
17 *Psychiatric Ass’n, Diagnostic & Statistical Manual of Mental Disorders* dispenses  
18 entirely with GAF scores. The rationale offered by the American Psychiatric  
19 Association (APA) is:

20  
21 Clinician-researchers at the APA have conceptualized need  
22 for treatment as based on assessments of diagnosis, severity  
23 of symptoms and diagnosis, dangerousness to self or others,  
24 and disability in social and self-care spheres. We do not believe  
25 that a single score from a global assessment, such as the GAF,  
26 conveys information to adequately assess each of the components,  
27 which are likely to vary independently over time. Further, we  
28 are concerned about evidence that the GAF requires specific  
training for proper use, and that good reliability and prediction  
of outcomes in routine clinical practice may depend on such  
training.

“*Insurance Implications of DSM-5*,” authored by the American Psychiatric  
Association, found at [www.psychiatry.org](http://www.psychiatry.org)

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1 performance of more than simple routine tasks and preclude her from working in a  
2 setting with more than superficial contact with the general public and co-workers.

3 This is borne out by Dr. Underwood’s remarks accompanying her assessment:

4           Capable of simple and detailed tasks. Able to get along with  
5           others on superficial basis. She is cooperative but feels  
6           anxious around others, particularly people she doesn’t know.  
7           She would do best working alone or with a few others. She  
8           has sufficient pace and is capable of tolerating changes.

9 (Tr. at p. 221). Based on the RFC presented to him, the VE identified jobs in  
10 which the Plaintiff would be “working alone or with a few others.”

### 11 **VE HYPOTHETICAL/CREDIBILITY OF PLAINTIFF**

12           At the hearing before the ALJ, Plaintiff testified she has “crying spells”  
13 brought on by stress and will “lock [herself] up for about an hour and . . . cry if  
14 I’m feeling, like, too stressed or anything.” (Tr. at p. 45). Asked to describe her  
15 worst days, Plaintiff said that on those days she will fight with her boyfriend by  
16 criticizing him for the “tiniest” thing. She says this will happen about once or  
17 twice a week. (Tr. at p. 46). Plaintiff’s counsel asked the VE about the impact of  
18 an individual whose mental impairments caused her to take extra breaks during the  
19 workday beyond the normal breaks. The VE testified that a person who had to  
20 take extra breaks on a frequent basis, even assuming they could secure  
21 employment, would not remain employed very long. (Tr. at p. 54-55).

22           Plaintiff contends it was error for the ALJ to not include these “panic  
23 attacks” in her RFC finding and in her hypothetical to the VE. The court  
24 disagrees. The medical record did not support including such a limitation in the  
25 RFC finding and in the VE hypothetical. In 2006, Plaintiff told Dr. Dougherty she  
26 had three anxiety attacks in the last six weeks. (Tr. at p. 198). Even so, Dr.  
27 Dougherty opined “[s]he should be able to carry out most practical job-related  
28 skills adequately” and indicated she would have “moderate” difficulty in social,

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1 occupational, or school functioning. In 2009, Plaintiff reported to Dr. Dougherty  
2 that she was “doing well emotionally” and that she did not “generally suffer from  
3 depression or anxiety,” although “[s]he gets anxious in very large crowds or in a  
4 busy working environment.” (Tr. at p. 296). She also reported “some difficulties  
5 with social discomfort though she is not likely to be generally socially isolated or  
6 withdrawn and she may speak with some others with relative ease.” (Tr. at p.  
7 299). Based primarily on Dr. Dougherty’s assessments, the ALJ found that one of  
8 Plaintiff’s severe impairments is an anxiety disorder “with reports of panic  
9 episodes” by the Plaintiff. (Tr. at p. 16). The frequency of these episodes was,  
10 however, legitimately called into question by the ALJ based on what Plaintiff told  
11 Dr. Dougherty and due to other issues concerning Plaintiff’s credibility, as  
12 discussed below.

13 An ALJ can only reject a plaintiff’s statement about limitations based upon  
14 a finding of “affirmative evidence” of malingering or “expressing clear and  
15 convincing reasons” for doing so. *Smolen v. Chater*, 80 F.3d 1273, 1283-84 (9<sup>th</sup>  
16 Cir. 1996). "In assessing the claimant's credibility, the ALJ may use ordinary  
17 techniques of credibility evaluation, such as considering the claimant's reputation  
18 for truthfulness and any inconsistent statements in her testimony." *Tonapeytan v.*  
19 *Halter*, 242 F.3d 1144, 1148 (9<sup>th</sup> Cir. 2001). See also *Thomas v. Barnhart*, 278  
20 F.3d 947, 958 (9<sup>th</sup> Cir.2002)(following factors may be considered: 1) claimant's  
21 reputation for truthfulness; 2) inconsistencies in the claimant's testimony or  
22 between her testimony and her conduct; 3) claimant’s daily living activities; 4)  
23 claimant's work record; and 5) testimony from physicians or third parties  
24 concerning the nature, severity, and effect of claimant's condition).

25 The ALJ offered “clear and convincing reasons” supported by substantial  
26 evidence in the record that Plaintiff’s testimony regarding limitations stemming  
27 from her mental impairments was not fully credible. This evidence is set forth in  
28

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1 detail in the ALJ's written decision. (Tr. at pp. 21-22). It includes the opinions of  
2 experts (Drs. Dougherty and Underwood) concerning the nature, severity and  
3 effect of Plaintiff's impairments; inconsistencies between her testimony and what  
4 she reported to health providers (testifying to extreme social limitation and yet  
5 indicating she engages in "social drinking;" testifying to extreme anxiety, yet  
6 choosing to live with a boyfriend involved in drug and alcohol abuse which  
7 resulted in criminal charges against her); activities of daily living (previously  
8 caring for three children and currently caring for an infant, cleaning house daily,  
9 eating dinner with her boyfriend's family with whom she resides); failure to  
10 appear for consultative examinations, failure to return phone calls and/or respond  
11 to mailed correspondence regarding her application for benefits; and non-  
12 compliance with recommended treatment and a treatment history that was  
13 otherwise minimal, inconsistent, conservative and routine.

## 14 15 **CONCLUSION**

16 Substantial evidence supports the Commissioner's decision that Plaintiff  
17 had not been disabled for any continuous 12 month period after July 24, 2006, the  
18 alleged onset date. Accordingly, Defendant's Motion For Summary Judgment  
19 (ECF No. 20) is **GRANTED** and Plaintiff's Motion For Summary judgment (ECF  
20 No. 14) is **DENIED**. The Commissioner's decision denying benefits is  
21 **AFFIRMED**.

22 **IT IS SO ORDERED.** The District Executive shall enter judgment  
23 accordingly and forward copies of the judgment and this order to counsel.

24 **DATED** this  1st  of October, 2013.

25  
26 *s/Lonny R. Suko*

27 \_\_\_\_\_  
28 LONNY R. SUKO  
United States District Judge

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