

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 10, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SAMBATH Y.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 2:17-CV-64-RMP

ORDER DENYING PLAINTIFF’S
AND GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT, without oral argument, are cross-motions for summary judgment from Plaintiff Sambath Y.,¹ **ECF No. 11**, and the Commissioner of Social Security (the “Commissioner”), **ECF No. 12**. Sambath sought judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner’s denial of her claim for Social Security disability insurance benefits. ECF No. 3. The Court has reviewed the motions, the administrative record, and is fully informed. For the

¹ In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first name and last initial, and, subsequently Plaintiff’s first name only, throughout this decision.

1 reasons stated below, the Commissioner’s motion, ECF No. 12, is granted, and
2 Sambath’s motion, ECF No. 11, is denied, resulting in a denial of benefits.

3 **BACKGROUND**

4 **A. Sambath’s Claim for Benefits and Procedural History**

5 On October 7, 2013, Sambath applied for disability insurance benefits alleging
6 that she had become disabled. Administrative Record (“AR”) 230–38.² Plaintiff
7 also sought supplemental security income, through an application filed at or around
8 the same time. Sambath claimed that beginning on December 31, 2011, she became
9 unable to work on the basis of depression and anxiety. AR 264.

10 **B. November 24, 2015 Hearing**

11 Sambath was represented by attorney Dana Madsen at her hearing before
12 Administrative Law Judge (“ALJ”) R.J. Payne on November 24, 2015, in Spokane,
13 Washington. An impartial medical expert testified regarding Sambath’s
14 psychological history and records and gave an opinion regarding the degree of
15 Sambath’s impairments. Sambath then gave testimony in response to the ALJ’s and
16 her attorney’s questions. Finally, a vocational expert testified in response to
17 questions from the ALJ regarding hypothetical scenarios and follow-up questions
18 from Sambath’s attorney.

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² The AR is filed at ECF No. 8.

1 Sambath testified that she was 37 years old at the time of the hearing. AR 63.
2 She was born in Cambodia, and immigrated to the United States as a young child,
3 where she attended school through eleventh grade. *See* AR 64. She has three
4 children, two of whom were minors at the time of the hearing and living in Seattle
5 with their father. Sambath's relationship with her children's father ended in
6 approximately 2009, and she moved to Spokane shortly thereafter. Sambath's past
7 work included time as a home attendant, a waitress, a receptionist, a child-care
8 provider, and an activity assistant at a retirement home.

9 From December 2011 until mid-2015, Sambath did not work because her
10 depression and anxiety symptoms "went downhill." AR 69. In approximately June
11 2015, she began to work at a gas station and increased her hours to a full-time
12 schedule in approximately mid-September 2015. *See* AR 66. At the time of the
13 hearing, Sambath was living with a roommate who was planning to move out of the
14 apartment. AR 95. According to Sambath's testimony, her typical day consists of
15 waking up at 5:00 a.m., walking eleven blocks to work, working from 6:30 a.m. until
16 2:30 p.m., and walking home after completing her shift. AR 66. Sambath then
17 prepares and eats her dinner, cleans up, and watches television or reads fiction
18 before going to sleep. AR 93. Sambath is able to sleep approximately nine hours
19 with the aid of prescription medication; without taking medication she sleeps four
20 hours or less. AR 89.

21 / / /

1 **C. ALJ’s Decision**

2 On January 13, 2016, the ALJ issued an unfavorable decision. AR 20–35.

3 Applying the five-step evaluation process, Judge Payne found:

4 **Step one:** Sambath’s full-time work as a cashier at a gas station beginning in
5 mid-September 2015 through the date of the ALJ’s decision met the criteria for
6 substantial gainful activity and does not qualify as work that is supported or
7 facilitated by special work conditions. However, the ALJ further found that there
8 was a continuous twelve-month period in which Sambath did not engage in
9 substantial gainful activity since her alleged onset date of December 31, 2011.

10 **Step two:** Sambath has the following severe impairments: “depressive
11 disorder not otherwise specified, major depressive disorder, unspecified personality
12 disorder with cluster B traits, [and] chronic posttraumatic stress disorder” AR
13 23. The ALJ did not find that carpal tunnel syndrome or issues with Sambath’s right
14 ankle constitute severe impairments because they were not substantiated by medical
15 signs or laboratory findings or any other basis for finding that those conditions were
16 medically determinable. AR 25.

17 **Step three:** Sambath does not have an impairment or combination of
18 impairments that meets or medically equals one of the listed impairments in 20
19 C.F.R. Part 404, Subpart P, Appendix 1.

20 / / /

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1 **Residual Functional Capacity (“RFC”):** Sambath has the RFC:

2 to perform a full range of work at all exertional levels but with the
3 following mental non-exertional limitations. The claimant can
4 understand, remember, and carry out simple instructions and some
5 more complex instructions; can handle have [sic] normal interaction
6 with the public but not in a confrontational type work setting; can
7 handle occasional contact with co-workers, but not in a team-work
8 type work setting; and can handle normal supervision, but no over-
9 the-shoulder supervision.

10 AR 27.

11 **Step four:** Sambath is capable of performing past relevant work as a home
12 attendant, waitress at a bar, receptionist, and recreation aide. Sambath also is
13 capable of performing other jobs that exist in the national economy, including
14 representative occupations such as production assembler, electronics worker, and
15 mail sorter.

16 **Step five:** Sambath was not under a disability, as defined by the Social
17 Security Act, from December 31, 2011, through the date of the ALJ’s decision.

18 The ALJ’s decision became the final decision of the Commissioner when the
19 Appeals Council denied Plaintiff’s request for review on December 15, 2016. AR
20 1–2; *see also* 20 C.F.R. § 404.981, § 416.1481.

21 **APPLICABLE LEGAL STANDARDS**

A. Standard of Review

Congress has provided a limited scope of judicial review of a Commissioner’s
decision. 42 U.S.C. § 405(g). A court may set aside the Commissioner’s denial of

1 benefits only if the ALJ's determination was based on legal error or not supported by
2 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985) (citing
3 42 U.S.C. § 405(g)). "The [Commissioner's] determination that a claimant is not
4 disabled will be upheld if the findings of fact are supported by substantial evidence."
5 *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)).
6 Substantial evidence is more than a mere scintilla, but less than a preponderance.
7 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); *McCallister v.*
8 *Sullivan*, 888 F.2d 599, 601–02 (9th Cir. 1989). Substantial evidence "means such
9 evidence as a reasonable mind might accept as adequate to support a conclusion."
10 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch
11 inferences and conclusions as the [Commissioner] may reasonably draw from the
12 evidence" will also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir.
13 1965). On review, the court considers the record as a whole, not just the evidence
14 supporting the decisions of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20,
15 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

16 It is the role of the trier of fact, not the reviewing court, to resolve conflicts in
17 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
18 interpretation, the court may not substitute its judgment for that of the
19 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
20 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
21 set aside if the proper legal standards were not applied in weighing the evidence and

1 making a decision. *Browner v. Sec’y of Health and Human Services*, 839 F.2d 432,
2 433 (9th Cir. 1988). Thus, if there is substantial evidence to support the
3 administrative findings, or if there is conflicting evidence that will support a finding
4 of either disability or nondisability, the finding of the Commissioner is conclusive.
5 *Sprague v. Bowen*, 812 F.2d 1226, 1229–30 (9th Cir. 1987).

6 **B. Definition of Disability**

7 The Social Security Act defines “disability” as the “inability to engage in any
8 substantial gainful activity by reason of any medically determinable physical or
9 mental impairment which can be expected to result in death or which has lasted or
10 can be expected to last for a continuous period of not less than 12 months.” 42
11 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a benefits
12 claimant shall be determined to be under a disability only if her impairments are of
13 such severity that the claimant is not only unable to do her previous work but cannot,
14 considering her age, education, and work experiences, engage in any other
15 substantial gainful work which exists in the national economy. 42 U.S.C.
16 §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both
17 medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
18 (9th Cir. 2001).

19 **C. Sequential Process**

20 The Commissioner has established a five-step sequential evaluation process
21 for determining whether a claimant is disabled. 20 C.F.R. § 416.920. Step one

1 determines if she is engaged in substantial gainful activities. If the claimant is
2 engaged in substantial gainful activities, benefits are denied. 20 C.F.R. §§
3 404.1520(a)(4)(i), 416.920(a)(4)(i).

4 If the claimant is not engaged in substantial gainful activities, the decision
5 maker proceeds to step two and determines whether the claimant has a medically
6 severe impairment or combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
7 416.920(a)(4)(ii). If the claimant does not have a severe impairment or combination
8 of impairments, the disability claim is denied.

9 If the impairment is severe, the evaluation proceeds to the third step, which
10 compares the claimant's impairment with a number of listed impairments
11 acknowledged by the Commissioner to be so severe as to preclude any gainful
12 activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); *see also* 20 C.F.R.
13 § 404, Subpt. P, App. 1. If the impairment meets or equals one of the listed
14 impairments, the claimant is conclusively presumed to be disabled.

15 If the impairment is not one conclusively presumed to be disabling, the
16 evaluation proceeds to the fourth step, which determines whether the impairment
17 prevents the claimant from performing work she has performed in the past. If the
18 claimant is able to perform her previous work, she is not disabled. 20 C.F.R.
19 §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's RFC
20 assessment is considered.

1 If the claimant cannot perform this work, in the fifth and final step in the
2 process the decision maker determines whether the claimant is able to perform other
3 work in the national economy in view of her residual functional capacity and age,
4 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
5 416.920(a)(4)(v); *see also Bowen v. Yuckert*, 482 U.S. 137 (1987).

6 The initial burden of proof rests upon the claimant to establish a prima facie
7 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
8 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
9 is met once the claimant establishes that a physical or mental impairment prevents
10 her from engaging in her previous occupation. The burden then shifts, at step five,
11 to the Commissioner to show that (1) the claimant can perform other substantial
12 gainful activity, and (2) a “significant number of jobs exist in the national economy”
13 that the claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

14 **ISSUES ON APPEAL**

15 Plaintiff raises the following issues regarding the ALJ’s decision:

- 16 1. Did the ALJ properly evaluate the medical opinion evidence?
- 17 2. Did the ALJ properly evaluate Sambath’s symptoms testimony?
- 18 3. Did the ALJ properly assess Sambath’s residual functional capacity?

19 **DISCUSSION**

20 *Treatment of medical opinion evidence*

21 In evaluating whether an applicant for benefits is disabled on the basis of

1 mental illness, an ALJ must assess the individual’s impairment in: (1) activities of
2 daily living; (2) social functioning; (3) concentration, persistence or pace; and (4)
3 episodes of decompensation. *Keyser v. Comm’r*, 648 F.3d 721, 725 (9th Cir. 2011)
4 (an ALJ must make findings and conclusions on each component of the “special
5 psychiatric review technique”). 20 C.F.R. § 404.1520a.

6 With respect to medical opinions, an ALJ must accord more weight to a
7 treating physician’s opinion than an examining physician’s, and an examining
8 physician’s opinion carries more weight than a non-examining, reviewing, or
9 consulting physician’s opinion. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir.
10 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). An ALJ must articulate
11 “specific and legitimate” reasons, supported by substantial evidence in the record, to
12 reject the opinion of either a treating or an examining doctor. *Lester*, 81 F.3d at
13 830–31.

14 William Jackline, Ed.D.

15 Dr. Jackline conducted a psychological examination of Plaintiff during a 1.5
16 hour interview in March 2014. AR 353–62. The ALJ found that some of Dr.
17 Jackline’s opinions regarding Plaintiff’s impairments were supported by the
18 evidence in the record, and others were not. Specifically, the ALJ gave significant
19 weight to Dr. Jackline’s opinion that Sambath would be moderately to significantly
20 impaired if she were required to work closely with others. The ALJ gave “very little
21 weight” to Dr. Jackline’s opinions that Plaintiff is mildly impaired in her ability to

1 understand, remember, and follow lengthy, complex, or fast-paced directions and
2 does not know how to access services. AR 31. The ALJ gave the following reasons
3 for his decision to weigh certain of Dr. Jackline's opinions lightly:

4 Dr. Jackline's remaining opinions rely heavily on the claimant's
5 subjective complaints, which are not fully credible as discussed above.
6 Further, Dr. Jackline was a one-time examiner that only reviewed one
7 examination note generated in connection with her application for
8 DSHS benefits, which specifically mentioned malingering as a rule-out
9 diagnosis.

10 AR 31.

11 There is substantial evidence in the record to show that Plaintiff was able to
12 identify and access services, thereby contradicting one of Dr. Jackline's conclusions.
13 *See, e.g.*, AR 325, 326. Furthermore, a consulting physician's opinion may be
14 rejected if it is based on a claimant's subjective complaints which were properly
15 discounted. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Morgan v.*
16 *Commissioner*, 169 F.3d 595 (9th Cir. 1999); *Fair v. Bowen*, 885 F.2d 597, 604 (9th
17 Cir. 2018). Therefore, the Court finds the ALJ's reasons pertinent and sufficient to
18 give less weight to some of Dr. Jackline's opinions.

19 John Arnold, Ph.D.

20 Dr. Arnold examined Sambath in 2013 and 2015 in connection with her
21 application for Washington State Department of Social and Health Services benefits.
He opined in 2013 that Sambath has mild to marked difficulty, most limiting in
social and persistence areas, with performing basic work activities. AR 350. In

1 2015, Dr. Arnold found Sambath's limitations in the same areas to be slightly worse
2 than in 2013, but his diagnoses remained the same. The ALJ gave Dr. Arnold's
3 opinions regarding Sambath's functional limitations "little weight," finding that "Dr.
4 Arnold's opinions regarding marked difficulty in performing basic work activities is
5 not consistent with or supported by the evidence of record, including his own
6 examination notes." AR 31. The ALJ pointed to the following as support for
7 discounting Dr. Arnold's opinion: Dr. Arnold's "suspicion" in both 2013 and 2015
8 that some of Sambath's behavior could be the result of malingering rather than
9 psychosis; Dr. Arnold's finding that Sambath performed worse in the area of
10 memory even though Dr. Arnold found no "interval worsening or head injury in her
11 treating provider records" between the two exam dates; and Dr. Arnold's lack of
12 SSA-specific program knowledge and brief examination of Sambath on two
13 occasions, two years apart, "without the benefit of reviewing any treating provider
14 records." AR 31.

15 The Court finds the ALJ's reasons for giving little weight to Dr. Arnold's
16 conclusions to be specific and legitimate. *See Lester*, 81 F.3d at 830–31. Before
17 reaching his conclusions regarding Sambath's functional limitations, Dr. Arnold
18 found that malingering would need to be ruled out as the basis for some of
19 Sambath's behaviors, as well as psychosis, before any definitive diagnosis could be
20 made. AR 329, 427. Dr. Arnold also noted that Sambath made a "quite
21 questionable effort" in responding to questions during the examination, AR 427, and

1 gave “vague” responses, AR 351. Moreover, there are other internal inconsistencies
2 to Dr. Arnold’s examination reports, which the ALJ alluded to in his decision.
3 Namely, although Dr. Arnold found that Sambath’s limitations either persisted at the
4 same level or worsened between 2013 and 2015, he concluded in 2015 that
5 vocational training would “minimize or eliminate barriers to employment,” when he
6 had posited in 2013 that further training would not help. AR 350, 428. Even if
7 Plaintiff disagrees with the weight given to Dr. Arnold’s opinions, substantial
8 evidence in the record supports the ALJ’s treatment of them.

9 State Agency Consultants

10 Plaintiff argues that the opinions of the two state agency psychological
11 consultants, Richard Borton, Ph.D., and Dan Donahue, Ph.D., cited in the ALJ’s
12 decision “did not constitute substantial evidence,” and the ALJ should not have
13 given them great weight. ECF No. 13 at 8. With respect to Dr. Borton, the ALJ
14 found that his opinion that the record was insufficient to rate Plaintiff’s functioning
15 “was not consistent with evidence [sic] received at the reconsideration and hearing
16 levels and is given little weight.” AR 30. The ALJ did not give great weight to any
17 other opinion by Dr. Borton, so Plaintiff’s contention appears to be unfounded.

18 With respect to Dr. Donahue, the ALJ found that his opinion that Plaintiff was
19 moderately limited in her activities of daily living, social function, and activities
20 requiring concentration, persistence, and pace was “not consistent with the evidence
21 of record,” and, accordingly, gave that opinion little weight. AR 30. Moreover, the

1 opinions to which the ALJ gave significant weight are merely observations of other
2 aspects of the record, such as Plaintiff’s medical record that indicates limited
3 treatment for Plaintiff’s mental health issues. *See* AR 115–20, 122–33. In that
4 regard, Dr. Donahue’s remaining opinions and observations both rest on substantial
5 evidence elsewhere in the record and are harmless for purposes of review of the
6 ALJ’s decision in that they merely reiterate information available elsewhere.

7 ***Treatment of Plaintiff’s symptoms testimony***

8 Regarding Sambath’s testimony about the intensity, persistence, and limiting
9 effects of her mental health issues, the ALJ found that “[t]he claimant’s subjective
10 complaints alleging limitations beyond those described in the residual functional
11 capacity are not fully credible and that the objective medical evidence is not fully
12 consistent with the claimant’s allegations.” AR 29. Sambath argues that the ALJ
13 impermissibly considered Sambath’s overall character or truthfulness rather than
14 limiting his considerations to Sambath’s statements about her symptoms and the
15 evidence relevant to her impairments. ECF No. 11 at 10–11; *see* SSR 16-3p.

16 Specifically, Sambath argues that the ALJ erred in basing his credibility
17 determination in part on “concerns regarding whether Sambath’s reports were
18 accurately recorded as to when she had insurance, her employment, and substance
19 abuse, because they are not directly related to symptoms, are not relevant to
20 symptom claims.” ECF No. 11 at 11. Sambath further argues that the ALJ
21 impermissibly described Sambath as taking a “low dose” of the medication for

1 treatment of depression when a medical professional had not so described Sambath's
2 medication regimen. ECF No. 13 at 2; *see also* AR 28.

3 An ALJ evaluating the severity of a claimant's symptoms may consider: (1)
4 the claimant's reputation for truthfulness; (2) inconsistencies in the claimant's
5 testimony or between her testimony and her conduct; (3) the claimant's daily
6 activities; (4) the claimant's work record; and (5) testimony from physicians or third
7 parties concerning the nature, severity, and effect of claimant's condition. *Thomas*
8 *v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). In finding that the claimant's
9 testimony as to the severity of her impairments is unreliable, the ALJ must make a
10 credibility determination with findings sufficiently specific to permit the court to
11 conclude that the ALJ did not arbitrarily discredit claimant's testimony. *Morgan v.*
12 *Commissioner*, 169 F.3d 595, 601–02 (9th Cir. 1999). A negative credibility finding
13 must be supported by “specific, clear and convincing” reasons when there is no
14 evidence of malingering. *Burrell v. Colvin*, 775 F.3d 1133, 1136 (9th Cir. 2014);
15 *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012). An ALJ does not need to
16 base on adverse credibility finding on clear and convincing reasons if the record
17 contains affirmative evidence suggesting that the claimant is malingering.
18 *Carmickle v. Commissioner*, 533 F.3d 115, 1160 (9th Cir. 2008); *Smolen v. Chater*,
19 80 F.3d 1273, 1281–82 (9th Cir. 1996).

20 The ALJ who determined Plaintiff's claims found that her “inconsistent
21 statements, symptom magnification, and failure to follow recommended treatment

1 lessen the credibility of her limitation allegations.” AR 29. Each of these reasons
2 individually, and all of them taken together, are sufficient bases for the ALJ to
3 conclude that Plaintiff’s self-reports of the severity of her symptoms should not be
4 fully credited. Moreover, any error in concluding that Sambath’s medication
5 regimen reflected a “low dose” or that her treatment approach to her mental issues
6 was “conservative” is harmless because the ALJ gave clear and convincing reasons
7 for partially discrediting Sambath’s symptoms testimony, which were supported by
8 substantial evidence in the record.

9 Therefore, the Court finds that the ALJ’s adverse credibility finding was
10 supported by substantial evidence and was not based on legal error.

11 ***Legal sufficiency of ALJ’s determination of Plaintiff’s ability to do her***
12 ***previous or other work***

13 The ALJ determined that Sambath retains the residual functional capacity to
14 perform a full range of work at all exertional levels with several non-exertional
15 limitations related to her compromised mental health. AR 27.

16 Although Plaintiff does not address the issue of the RFC in her reply brief, *see*
17 ECF No. 13, in her initial brief on appeal she emphasizes that her work as a cashier
18 is under “supportive circumstances” in which her supervisor prompted her to
19 perform the repetitive tasks that made up her work there, including stocking shelves,
20 cooking, and operating the cash register. ECF No. 11 at 4. However, the record
21 does not demonstrate that Sambath is permitted to work at a “lower standard of

1 productivity . . . than other employees,” that she did not perform the work well, or
2 that the assistance she receives from her supervisor is of a different nature than the
3 direction provided any other employees. *See* 20 C.F.R. § 404.1573. Therefore, the
4 Court does not find that Sambath’s current work conditions undermine the ALJ’s
5 findings regarding Sambath’s residual functional capacity.

6 **CONCLUSION**

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 11**, is
9 **DENIED.**
- 10 2. Defendant’s Motion for Summary Judgment, **ECF No. 12**, is
11 **GRANTED.**
- 12 3. Judgment shall be entered for Defendant.

13 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
14 Order, enter Judgment as directed, and provide copies to counsel.

15 **DATED** May 10, 2018.

16
17 *s/ Rosanna Malouf Peterson*
18 ROSANNA MALOUF PETERSON
19 United States District Judge
20
21