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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANGELA A. MURCHISON,	)	Case No. CV 15-5857-JPR
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM DECISION AND ORDER</b>
v.	)	<b>AFFIRMING COMMISSIONER</b>
	)	
CAROLYN W. COLVIN, Acting	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
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**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner’s final decision denying her application for supplemental security income benefits (“SSI”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). The matter is before the Court on the parties’ Joint Stipulation, filed August 10, 2016, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner’s decision is affirmed.

1 **II. BACKGROUND**

2 Plaintiff was born in 1955. (Administrative Record ("AR")  
3 49.) She completed 12th grade and one year of college. (Id.)  
4 She worked as an administrative assistant and loan processor.  
5 (AR 90.)

6 On February 10, 2012, Plaintiff applied for SSI, alleging  
7 that she had been unable to work since October 13, 1997 (AR 49,  
8 154), because of a "[m]ajor depressive disorder" (AR 81). After  
9 her application was denied, she requested a hearing before an  
10 Administrative Law Judge. (AR 94, 99.) A hearing was held on  
11 March 7, 2013, at which Plaintiff, who was not represented by  
12 counsel, requested an adjournment so that she could get a lawyer.  
13 (AR 73-80.) A second hearing was held on July 19, 2013, at which  
14 Plaintiff, who was then represented by counsel, testified, as did  
15 a vocational expert. (AR 44-72.) In a written decision issued  
16 November 22, 2013, the ALJ found Plaintiff not disabled. (AR 26-  
17 40.) On January 15, 2014, Plaintiff sought Appeals Council  
18 review (AR 20-21), which was denied on June 10, 2015 (AR 1-3).  
19 This action followed.

20 **III. STANDARD OF REVIEW**

21 Under 42 U.S.C. § 405(g), a district court may review the  
22 Commissioner's decision to deny benefits. The ALJ's findings and  
23 decision should be upheld if they are free of legal error and  
24 supported by substantial evidence based on the record as a whole.  
25 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra  
26 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial  
27 evidence means such evidence as a reasonable person might accept  
28 as adequate to support a conclusion. Richardson, 402 U.S. at

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

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

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

##### 20 A. The Five-Step Evaluation Process

21 The ALJ follows a five-step evaluation process to assess  
22 whether a claimant is disabled. 20 C.F.R. § 416.920(a)(4);  
23 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as  
24 amended Apr. 9, 1996). In the first step, the Commissioner must  
25 determine whether the claimant is currently engaged in  
26 substantial gainful activity; if so, the claimant is not disabled  
27 and the claim must be denied. § 416.920(a)(4)(i).

28 If the claimant is not engaged in substantial gainful

1 activity, the second step requires the Commissioner to determine  
2 whether the claimant has a "severe" impairment or combination of  
3 impairments significantly limiting her ability to do basic work  
4 activities; if not, the claimant is not disabled and the claim  
5 must be denied. § 416.920(a)(4)(ii).

6 If the claimant has a "severe" impairment or combination of  
7 impairments, the third step requires the Commissioner to  
8 determine whether the impairment or combination of impairments  
9 meets or equals an impairment in the Listing of Impairments  
10 ("Listing") at 20 C.F.R. part 404, subpart P, appendix 1; if so,  
11 disability is conclusively presumed. § 416.920(a)(4)(iii).

12 If the claimant's impairment or combination of impairments  
13 does not meet or equal an impairment in the Listing, the fourth  
14 step requires the Commissioner to determine whether the claimant  
15 has sufficient RFC to perform her past work; if so, she is not  
16 disabled and the claim must be denied. § 416.920(a)(4)(iv). The  
17 claimant has the burden of proving she is unable to perform past  
18 relevant work. Drouin, 966 F.2d at 1257. If the claimant meets  
19 that burden, a prima facie case of disability is established.  
20 Id. If that happens or if the claimant has no past relevant  
21 work, the Commissioner then bears the burden of establishing that  
22 the claimant is not disabled because she can perform other  
23 substantial gainful work available in the national economy.  
24 § 416.920(a)(4)(v); Drouin, 966 F.2d at 1257. That determination  
25 comprises the fifth and final step in the sequential analysis.  
26 § 416.920(a)(4)(v); Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d  
27 at 1257.

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

2           At step one, the ALJ found that Plaintiff had not engaged in  
3 substantial gainful activity since February 10, 2012, the filing  
4 date.<sup>1</sup> (AR 31.) At step two, he concluded that Plaintiff had  
5 the severe impairment of bipolar disorder. (Id.) At step three,  
6 he determined that her impairment did not meet or equal a  
7 listing. (AR 32.)

8           At step four, the ALJ found that Plaintiff had the RFC to  
9 perform a full range of work at all exertional levels but with  
10 nonexertional limitations. (AR 34.) Specifically, she could  
11 perform "simple, repetitive, tasks" and "work occasionally with  
12 coworkers and supervisors," but she was not able to work with the  
13 public or perform "higher stress work such as work requiring  
14 production quotas or assembly line work." (Id.)

15           The ALJ found that Plaintiff had no past relevant work. (AR  
16 38.) Finally, based on the VE's testimony, he concluded that  
17 Plaintiff could perform jobs existing in significant numbers in  
18 the national economy. (AR 39.) Accordingly, he found her not  
19 disabled. (Id.)

20   **V.   DISCUSSION**

21           Plaintiff alleges that the ALJ improperly rejected the  
22 opinion evidence of treating doctor Cynthia Washington and  
23 examining doctor Ernest Bagner. (J. Stip. at 4-5.)  
24 Specifically, Plaintiff alleges that the ALJ "failed to  
25 articulate a legally sufficient rationale" for rejecting their  
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27           <sup>1</sup> Because SSI payments may not be retroactively awarded,  
28 Plaintiff's effective onset date is her filing date. See SSR 83-  
20, 1983 WL 31249, at \*1 (1983).

1 opinions about her allegedly limited ability to "maintain  
2 attendance in the workplace." (Id. at 5, 9.) For the reasons  
3 discussed below, remand is not warranted.

4 A. Applicable Law

5 Three types of physicians may offer opinions in Social  
6 Security cases: (1) those who directly treated the plaintiff, (2)  
7 those who examined but did not treat the plaintiff, and (3) those  
8 who did neither. Lester, 81 F.3d at 830. A treating physician's  
9 opinion is generally entitled to more weight than an examining  
10 physician's, and an examining physician's opinion is generally  
11 entitled to more weight than a nonexamining physician's. Id.

12 This is so because treating physicians are employed to cure  
13 and have a greater opportunity to know and observe the claimant.  
14 Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996). If a  
15 treating physician's opinion is well supported by medically  
16 acceptable clinical and laboratory diagnostic techniques and is  
17 not inconsistent with the other substantial evidence in the  
18 record, it should be given controlling weight. § 416.927(c)(2).  
19 If a treating physician's opinion is not given controlling  
20 weight, its weight is determined by length of the treatment  
21 relationship, frequency of examination, nature and extent of the  
22 treatment relationship, amount of evidence supporting the  
23 opinion, consistency with the record as a whole, the doctor's  
24 area of specialization, and other factors. § 416.927(c)(2)-(6).

25 When a treating physician's opinion is not contradicted by  
26 other evidence in the record, it may be rejected only for "clear  
27 and convincing" reasons. See Carmickle v. Comm'r, Soc. Sec.  
28 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citing Lester, 81

1 F.3d at 830-31). When it is contradicted, the ALJ must provide  
2 only "specific and legitimate reasons" for discounting it. Id.  
3 (citing Lester, 81 F.3d at 830-31). Furthermore, "[t]he ALJ need  
4 not accept the opinion of any physician, including a treating  
5 physician, if that opinion is brief, conclusory, and inadequately  
6 supported by clinical findings." Thomas v. Barnhart, 278 F.3d  
7 947, 957 (9th Cir. 2002); accord Batson v. Comm'r of Soc. Sec.  
8 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).

9 B. Relevant Background

10 1. *Early-2012 medical records*

11 On January 26, 2012, shortly before the February 10 onset  
12 date, Plaintiff visited an urgent-care center. (AR 259.) She  
13 tested positive for cocaine and was diagnosed with depression and  
14 cocaine abuse. (AR 260-62.) A mental-status exam found that she  
15 was depressed and had "poor" judgment but was otherwise normal.  
16 (AR 259.) She was "[u]sing cocaine." (Id.) During a visit to  
17 the West Central Family Mental Health center the same day, she  
18 "denied any current . . . substance abuse problems." (AR 223.)  
19 She returned to the urgent-care center on February 7, 2012, where  
20 she tested negative for cocaine and her depression and cocaine-  
21 abuse diagnoses were confirmed. (AR 256.) She tested positive  
22 for cocaine again in March 2012. (AR 266.)

23 2. *Function reports*

24 In a function report dated April 12, 2012, Plaintiff noted  
25 that her daily routine involved watching television and playing  
26 with her dog. (AR 176.) She did not need to be reminded to take  
27 her medication. (AR 178.) She could iron, wash clothes and  
28 dishes, and clean the house. (Id.) She noted that she

1 experienced auditory and visual hallucinations and had problems  
2 concentrating, handling stress, and getting along with others.  
3 (AR 181-83.) A third-party function report completed by her  
4 daughter echoed much of Plaintiff's own report. (See AR 168-75.)  
5 Her daughter noted, however, that Plaintiff needed to be reminded  
6 to take her medication. (AR 170.)

7           3.    *Dr. Bagner*

8           On August 17, 2012, consulting psychiatrist Bagner completed  
9 a psychiatric evaluation. (AR 274-78.) Dr. Bagner noted that  
10 Plaintiff's chief complaints were "[m]ood swings, depression,  
11 restlessness, [and] low motivation." (AR 274.) She reported  
12 "auditory hallucinations and paranoia at times," was seeing a  
13 psychiatrist, and was prescribed Cymbalta and Abilify.<sup>2</sup> (AR  
14 275.) She had a history of cocaine dependence but had "been  
15 clean since March of 2012." (Id.) Dr. Bagner did not review  
16 Plaintiff's medical records because "no medical records [were]  
17 available for review."<sup>3</sup> (Id.)

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19           <sup>2</sup> Cymbalta is the brand name of a selective serotonin and  
20 norepinephrine reuptake inhibitor used to treat depression and  
21 generalized anxiety disorder. See Duloxetine, MedlinePlus,  
22 <https://medlineplus.gov/druginfo/meds/a604030.html> (last updated  
23 May 15, 2016). Abilify is the brand name of an "atypical  
24 antipsychotic" drug used to treat episodes of mania or mixed  
25 episodes (symptoms of mania and depression that happen together).  
26 See Aripiprazole, MedlinePlus, <https://medlineplus.gov/druginfo/meds/a603012.html> (last updated June 15, 2016). It is also used  
27 with an antidepressant to treat depression when symptoms cannot  
28 be controlled by the antidepressant alone. Id.

26           <sup>3</sup> Indeed, although the ALJ held the record open for 30 days  
27 after the hearing (AR 71), Plaintiff submitted no additional  
28 treatment records (compare AR "Court Transcript Index," with AR  
41-43 ("List of Exhibits" from ALJ decision)), only a medical  
(continued...)



1 In the mental-status examination, Dr. Bagner noted that  
2 Plaintiff was cooperative and had good eye contact. (AR 276.)  
3 Her tone and volume of speech were "soft" and her rate of speech  
4 was "slow," but she was "clear and coherent." (Id.) She was  
5 "depressed" and her affect was "blunted." (Id.) Dr. Bagner  
6 noted that Plaintiff "did not exhibit looseness of association,  
7 thought disorganization, flight of ideas, thought blocking,  
8 tangentiality or circumstantiality." (Id.) She admitted to  
9 auditory and visual hallucinations. (Id.) She was alert and  
10 oriented to time, place, person, and purpose. (Id.) Dr. Bagner  
11 tested Plaintiff's memory and noted that she was "able to recall  
12 3 out of 3 objects immediately and 1 out of 3 objects in 5  
13 minutes[,] . . . what she ate for breakfast . . . [and] her date  
14 of birth." (AR 277.) She was "able to perform Serial 3's,"  
15 spell "music" forward and backward, answer basic "fund of  
16 information" questions, and interpret the meaning of a proverb.  
17 (Id.) Dr. Bagner diagnosed Plaintiff with "Bipolar disorder, Not  
18 Otherwise Specified" and "Cocaine Dependence, early remission."  
19 (Id.) She was not limited in her "ability to follow simple oral  
20 and written instructions" but was "mildly limited" in her ability  
21 to follow detailed instruction; interact with the public,  
22 coworkers, and supervisors; and comply with job rules, such as  
23 safety and attendance. (AR 277-78.) She was "moderately  
24 limited" in her ability to "respond to change in a routine work  
25 setting," "respond to work pressure in a usual working setting,"  
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27 <sup>3</sup> (...continued)  
28 questionnaire (see AR 43, 290).

1 and partake in her daily activities. (AR 278.) Her prognosis  
2 was "fair with continued treatment." (Id.)

3 4. *Dr. Brooks*

4 On September 18, 2012, Dr. R.E. Brooks,<sup>4</sup> a state-agency  
5 medical consultant, reviewed Plaintiff's medical records and  
6 completed a case analysis. (AR 81-92.) Dr. Brooks also assessed  
7 Plaintiff's mental RFC. (AR 88-90.) Dr. Brooks noted that  
8 Plaintiff reported that she was able to watch TV, play with her  
9 dog, cook, iron, mop, sweep, do dishes, shop, use public  
10 transportation, go out alone, and talk on the phone. (AR 85.)  
11 She found it "hard to understand and comprehend conversation,"  
12 did not like "being around people," and had poor concentration.  
13 (Id.) Dr. Brooks summarized the function reports from Plaintiff  
14 and her daughter (see AR 168-83) and reviewed Plaintiff's medical  
15 records (see AR 85 (reviewing records from "Exodus Recovery" (see  
16 AR 253-72), "CO/M/LA W Central Mental," including "06/06/12  
17 Initial Assessment" (see AR 214-23, 228-52), and Dr. Bagner's  
18 report (see AR 274-78))). She had "moderate" restrictions in her  
19 activities of daily living and "moderate" difficulty in  
20 maintaining concentration, persistence, or pace. (AR 86.) She  
21 had "mild" difficulties in maintaining social functioning. (Id.)  
22 Dr. Brooks found Plaintiff "partially credible," noting that she  
23 "show[ed] good eye contact" and had "soft and slow rate [of]  
24 speech" but was "clear and coherent." (AR 87.) She had "no

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26 <sup>4</sup> Dr. Brooks has a specialty code of "37" (AR 93),  
27 indicating "[p]sychiatry," see Program Operations Manual System  
28 (POMS) DI 24501.004, U.S. Soc. Sec. Admin. (May 5, 2015),  
<http://policy.ssa.gov/poms.nsf/lnx/0424501004>.

1 looseness of associations," and her memory was "intact." (Id.)

2 In the mental RFC assessment, Dr. Brooks opined that  
3 Plaintiff could "understand and remember simple instructions and  
4 work procedures but ha[d] some limitation in the ability to  
5 understand/remember detailed instructions." (AR 88.) She was  
6 "moderately limited" in her ability to understand, remember, and  
7 carry out detailed instructions. (Id.) She had no other  
8 significant limitations in the areas of "understanding and  
9 memory" or "sustained concentration and persistence." (Id.)  
10 Plaintiff was "[n]ot significantly limited" in her ability to  
11 "perform activities within a schedule, maintain regular  
12 attendance, and be punctual within customary tolerances" or  
13 "complete a normal workday and workweek without interruptions  
14 from psychologically based symptoms." (AR 88-89.) She was "able  
15 to maintain sufficient attention and concentration to  
16 consistently perform simple tasks and maintain a regular  
17 schedule." (AR 89.) Dr. Brooks also found that Plaintiff had  
18 "no limitations" in the area of social interaction, was "mildly  
19 limited" in her ability to comply with job rules "such as safety  
20 and attendance," and was "moderately limited" in her ability to  
21 respond to changes and work pressure in a normal work setting.  
22 (AR 89-90.)

23 5. *Dr. Washington*

24 Plaintiff started seeing Dr. Washington, her treating  
25 psychiatrist, on February 5, 2013 at the West Central Family  
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1 Mental Health center.<sup>5</sup> (AR 291-95.) Dr. Washington met with  
2 Plaintiff every two or three months for approximately "20-30  
3 minutes" at a time. (Id.) In a May 23, 2013 progress report,  
4 Dr. Washington noted that Plaintiff's symptoms had "waxed and  
5 waned over the past year" and that in her immediately prior  
6 appointment, on May 7, she "presented with complaints [of]  
7 auditory hallucinations, visual hallucinations, paranoia,  
8 depressed mood, anger/irritability, racing thoughts, worry,  
9 variable sleep, [and] fatigue." (AR 289.) Plaintiff's  
10 medications were "changed" to Cymbalta and Seroquel.<sup>6</sup> (Id.) Dr.  
11 Washington recommended that Plaintiff continue with her treatment  
12 "to stabilize [her] condition," noting that her "residual  
13 functional limitations" were "[s]evere." (Id.) Dr. Washington  
14 found that Plaintiff had "[i]mpaired social and occupational  
15 functioning due to mood swings, perceptual disturbances[,] and  
16 impaired concentration." (Id.) None of Dr. Washington's notes  
17 indicate an awareness of Plaintiff's substance-abuse history.

18 On July 16, 2013, Dr. Washington completed an RFC  
19 questionnaire. (AR 291-95.) She noted that her last appointment  
20 with Plaintiff had been on July 9. (AR 291.) Dr. Washington was  
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22 <sup>5</sup> The ALJ mistakenly stated that Plaintiff began seeing Dr.  
23 Washington in June 2012. (AR 37.) According to Dr. Washington,  
24 that was when Plaintiff first became a patient at the clinic, but  
25 with someone other than Dr. Washington. (See AR 291.) That too,  
26 was incorrect, however, as Plaintiff had apparently been a  
27 patient at the clinic off and on since 2007. (See AR 193; see,  
28 e.g., AR 223, 237-52.)

26 <sup>6</sup> Seroquel is the brand name of a drug used to treat  
27 depression in patients with bipolar disorder. See Quetiapine,  
28 MedlinePlus, <https://medlineplus.gov/druginfo/meds/a698019.html>  
(last updated Apr. 15, 2014).

1 asked to rate Plaintiff's "mental abilities to function  
2 independently, appropriately, effectively, and on a sustained,  
3 consistent, useful and routine basis, without direct supervision  
4 or undue interruptions or distractions – 8 hours per day, 5 days  
5 per week – in a regular, competitive work setting for more than  
6 six consecutive months." (AR 292.) She indicated that in the  
7 areas of remembering locations and "work-like" procedures;  
8 understanding, remembering, and carrying out "very short and  
9 simple" instructions; making simple work-related decisions;  
10 maintaining socially appropriate behavior and adhering to basic  
11 standards of neatness and cleanliness; traveling in unfamiliar  
12 places or using public transportation; and setting realistic  
13 goals or making plans independently of others, Plaintiff's mental  
14 abilities would preclude her performance for five percent of the  
15 workday. (AR 292-93.) Plaintiff's performance would be  
16 precluded for 10 percent of the workday in the areas of  
17 performing activities within a schedule, maintaining regular  
18 attendance, and being punctual; working in coordination with or  
19 in proximity to others without being distracted by them; and  
20 getting along with coworkers or peers without distracting them or  
21 exhibiting behavioral extremes. (Id.) Her performance would be  
22 precluded for 15 percent or more of the workday in the areas of  
23 understanding, remembering, and carrying out detailed  
24 instructions; maintaining attention and concentration for  
25 extended periods of time; completing a normal workday and  
26 workweek without interruptions from psychologically based  
27 symptoms; and performing at a consistent pace without an  
28 unreasonable amount of rest. (Id.) Her performance would be

1 precluded between zero and five percent of the workday in  
2 sustaining an ordinary routine without special supervision (AR  
3 292), between five and 10 percent in interacting appropriately  
4 with the general public and responding appropriately to changes  
5 in the work setting (AR 293), and between 10 and 15 percent in  
6 accepting instructions and responding appropriately to criticism  
7 from supervisors (id.). Dr. Washington also noted that Plaintiff  
8 suffered from "memory lapses." (Id.) To the question,

9       Based upon all of [Plaintiff's] physical and mental  
10       limitations taken in combination, what percent of [an] 8-  
11       hour work day, 5 days a week, in a competitive work  
12       environment would [Plaintiff] be precluded from  
13       performing a job, or "off task", that is, either unable  
14       to perform work and/or away from [Plaintiff's] work  
15       environment due to those limitations?

16 Dr. Washington checked, "[m]ore than 30 [percent]." (AR 294.)  
17 She opined that Plaintiff's conditions would cause her to miss an  
18 average of four days of work a month and be unable to complete an  
19 eight-hour workday for another four days a month. (Id.) Dr.  
20 Washington opined that "within a reasonable degree of medical  
21 certainty," Plaintiff would be "unable to obtain and retain work  
22 in a competitive work setting - 8 hours a day, 5 days a week -  
23 for a continuous period of at least six months." (Id.)

24               6. *Plaintiff's testimony*

25       At the July 19, 2013 hearing, Plaintiff testified that she  
26 could not "concentrate very long" because she heard voices, saw  
27 faces, and suffered from short-term memory loss. (AR 51.) She  
28 "sometimes" had difficulty remembering to take her medication and

1 "kind of like [took] it sporadically" (AR 52; see also AR 62),  
2 but she noted that the medications she took in the morning helped  
3 with her mood (AR 65-66). She confirmed that she was "severely  
4 addicted to cocaine" until 2012. (AR 58.) When asked by the  
5 ALJ, "Did you stop taking your medications for mental health  
6 treatment?," Plaintiff responded, "Yes, I did." (Id.) She  
7 stopped taking her medication "for about six months one time,"  
8 but she could not remember the exact dates. (AR 58-59.) Since  
9 March 2012 she had not consumed any alcohol or drugs other than  
10 her medication. (AR 67.)

11 C. Analysis

12 The ALJ found that Plaintiff was able to perform "a full  
13 range of work at all exertional levels" but was limited to  
14 "simple, repetitive, tasks," should avoid working with the public  
15 and performing "higher stress work such as work requiring  
16 production quotas or assembly line work," and could "work  
17 occasionally with coworkers and supervisors." (AR 34.) The ALJ  
18 considered Plaintiff's statements and the third-party function  
19 report provided by her daughter (AR 35-36) and concluded that  
20 they were not fully credible (AR 36).<sup>7</sup> He summarized the medical  
21 opinions of examining doctor Bagner and treating doctor  
22 Washington. (AR 36-38.) He accorded "reasonable weight" to the  
23 opinions of Drs. Bagner and Brooks and "little weight" to the  
24 opinion of Dr. Washington. (AR 38.)

25 As an initial matter, Plaintiff's assertion that the ALJ  
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27 <sup>7</sup> Plaintiff has not challenged the ALJ's assessment of her  
28 credibility or rejection of the third-party report.

1 ignored the "uncontroverted" (J. Stip. at 10) opinions of Drs.  
2 Washington, Bagner, and Brooks about Plaintiff's "attendance  
3 problem" (id. at 9) and that those opinions were consistent with  
4 each other on that point (see, e.g., id. at 10) is incorrect.  
5 Dr. Washington's opinion about Plaintiff's workplace attendance –  
6 that she would be "off task" more than 30 percent of the workday,  
7 absent four days a month, and unable to complete an eight-hour  
8 workday four days a month (AR 294) – was not "uncontroverted."  
9 Dr. Brooks opined that Plaintiff was "[n]ot significantly  
10 limited" in her ability to "perform activities within a schedule,  
11 maintain regular attendance, and be punctual within customary  
12 tolerances" or "complete a normal workday and workweek without  
13 interruptions from psychologically based symptoms." (AR 88-89.)  
14 She was "able to maintain sufficient attention and concentration  
15 to consistently perform simple tasks and maintain a regular  
16 schedule." (AR 89.) Dr. Brooks noted a mild limitation in  
17 Plaintiff's ability to comply with job rules "such as safety and  
18 attendance." (Id.) Similarly, Dr. Bagner noted that Plaintiff  
19 was "mildly limited" in her ability to comply with job rules,  
20 such as safety and "attendance," and was "moderately limited" in  
21 her ability to "respond to changes in a routine work setting" and  
22 "respond to work pressure in a usual working setting." (AR 278.)

23 Thus, neither Dr. Bagner nor Dr. Brooks opined that  
24 Plaintiff would have the serious problems with attendance that  
25 were identified by Dr. Washington. The ALJ did not ignore the  
26 medical opinions about Plaintiff's workplace attendance. Rather,  
27 he rejected Dr. Washington's more restrictive finding and, as  
28 explained below, provided specific, legitimate reasons for doing



1 so.<sup>8</sup> Because Dr. Washington's opinion was contradicted by the  
2 opinions of Drs. Bagner and Brooks, the ALJ had to give only  
3 specific and legitimate reasons for rejecting it. See Carmickle,  
4 533 F.3d at 1164. The ALJ did so.

5 First, the ALJ gave "little weight" to Dr. Washington's  
6 opinion in part because of her failure to mention Plaintiff's  
7 problems with cocaine abuse, taking medication as prescribed, and  
8 complying with treatment despite evidence in the record showing  
9 that those problems were both relatively recent and pervasive.  
10 (AR 38.) Indeed, Dr. Washington does not mention Plaintiff's  
11 history of cocaine abuse in either her May 23, 2013 progress note  
12 or her July 16 RFC questionnaire. (See AR 289, 291-95.) When  
13 Plaintiff returned to West Central Family Mental Health clinic -  
14 where Dr. Washington worked - in January 2012, she apparently  
15 falsely stated that she had no substance-abuse problems. (AR  
16 223.) But Plaintiff's last admitted cocaine use was in March

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17  
18 <sup>8</sup> Plaintiff argues for the first time in her reply that the  
19 ALJ failed to incorporate her moderate limitations in  
20 "concentration, persistence, or pace" into the RFC. (See J.  
21 Stip. at 22-25.) Because this issue was raised for the first  
22 time in the reply, the argument is waived. See Polion v. Colvin,  
23 No. SACV 12-0743-DTB, 2013 WL 3527125, at \*2 n.4, \*7 n.7 (C.D.  
24 Cal. July 10, 2013) (citing Eberle v. City of Anaheim, 901 F.2d  
25 814, 818 (9th Cir. 1990)); see also Thacker v. Comm'r of Soc.  
26 Sec., No. 1:11-cv-00613-LJO-BAM, 2012 WL 1978701, at \*11-12 (E.D.  
27 Cal. June 1, 2012) (applying general rule - that issues raised  
28 for first time in reply brief are waived - in Social Security  
context). Accordingly, the Court does not consider it. It does  
appear, however, that the ALJ reasonably translated the mild  
deficiencies assessed by examining doctor Bagner and the moderate  
deficiencies assessed by reviewing doctor Brooks into Plaintiff's  
RFC by limiting her to simple, repetitive tasks and low-stress  
work. See Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th  
Cir. 2008).

1 2012. (See AR 266, 291.) The ALJ noted that Plaintiff was not  
2 "honest in her history" when it came to her drug use. (AR 38.)  
3 Indeed, Plaintiff made inconsistent statements about her cocaine  
4 use (see, e.g., AR 223 (Jan. 26, 2012: denying any substance  
5 abuse), 259 (same day: noted as "[u]sing cocaine")). Nothing in  
6 the record indicates that Dr. Washington had any awareness of  
7 Plaintiff's substance-abuse history.

8 As to taking her prescribed medicines, in April 2012  
9 Plaintiff claimed that she did not need reminders to take her  
10 medication, but her daughter said that she did. (AR 170, 178.)  
11 In June 2012 Plaintiff reported having been off her medication  
12 since that February and expressed the desire to start again. (AR  
13 230). At the July 19, 2013 hearing, she testified that she had  
14 difficulty remembering to take her medication. (AR 52, 62.) The  
15 ALJ noted that Plaintiff "made significant improvement with  
16 increased functioning after she stopped taking cocaine and after  
17 she started taking psychotropic medication." (See, e.g., AR 63-  
18 66 (Plaintiff testifying that medications helped alleviate her  
19 symptoms), 219 (June 2012 assessment noting that Cymbalta "was  
20 effective"), 240 (Nov. 2010 medication report noting "good  
21 response to meds"), 256 (Feb. 2012 urgent-care-center discharge  
22 summary noting "importance of sobriety coupled with medication  
23 compliance" and "[r]ecovery [p]rognosis" of "[g]ood"), 259 (Jan.  
24 2012 recovery-center progress report noting "good effect" of  
25 medication, and Plaintiff reporting that she was "really positive  
26 on it"), 278 (Dr. Bagner's Aug. 2012 opinion that Plaintiff's  
27 "prognosis is fair with continued treatment").) The ALJ was not  
28 persuaded that Plaintiff's "drug abuse [was] not a material

1 factor in this case." (AR 38.)

2 Dr. Washington's apparent ignorance of Plaintiff's medical  
3 issues was relevant to the ALJ's assessment of the weight to give  
4 her opinion. See § 416.927(c)(2)(ii) ("[n]ature and extent of  
5 the treatment relationship" and "the more knowledge a treating  
6 source has about your impairment(s)" are relevant factors in  
7 assessing treating-source opinion); Edlund v. Massanari, 253 F.3d  
8 1152, 1157 & n.6 (9th Cir. 2001) (as amended) (same); see also  
9 § 416.927(c)(6) (extent to which doctor is familiar with record  
10 is relevant factor in deciding weight to give opinion). Because  
11 he found Plaintiff to be "not entirely credible" (AR 36) and "not  
12 honest in [the] history" she provided to her treating doctors  
13 about her cocaine and medication use (AR 38) – findings Plaintiff  
14 has not challenged – the ALJ properly gave little weight to Dr.  
15 Washington's opinions. See James v. Astrue, No. C08-653 CRD,  
16 2009 WL 112952, at \*3-4 (W.D. Wash. Jan. 13, 2009) (holding that  
17 ALJ did not err in rejecting treating doctor's opinion because  
18 Plaintiff had not been "truthful" with her doctor about "her  
19 activities or abilities").

20 Second, the ALJ noted that Dr. Washington's opinion that  
21 Plaintiff had a "diminished ability to function" was not  
22 corroborated by a "longitudinal treatment record" and was  
23 contradicted by Dr. Bagner's mental-status examination. (AR 38.)  
24 Indeed, the other medical-opinion testimony in the record  
25 contradicted Dr. Washington's assessment of Plaintiff's  
26 attendance limitations. Dr. Brooks opined that Plaintiff had  
27 only mild limitations in attendance (AR 89) and Dr. Bagner noted  
28 mild to moderate limitations in that area (AR 278). Dr. Bagner

1 performed a complete psychiatric evaluation of Plaintiff, finding  
2 that she had only mild or moderate functional limitations. (AR  
3 277-78.) He opined that her prognosis was "fair with continued  
4 treatment." (AR 278.) Because Dr. Bagner personally observed  
5 and examined Plaintiff and his findings were consistent with the  
6 objective evidence, his opinion constitutes substantial evidence  
7 supporting the ALJ's decision. See Tonapetyan, 242 F.3d at 1149  
8 (finding that examining physician's "opinion alone constitutes  
9 substantial evidence, because it rests on his own independent  
10 examination of [plaintiff]"); Andrews v. Shalala, 53 F.3d 1035,  
11 1041 (9th Cir. 1995) (opinion of nontreating source based on  
12 independent clinical findings may itself be substantial  
13 evidence). This is particularly true given Dr. Washington's  
14 apparently limited relationship with Plaintiff. See Lester, 81  
15 F.3d at 830-31.

16 Dr. Brooks's opinion also constitutes substantial evidence  
17 because he relied on Dr. Bagner's objective medical findings.  
18 (AR 85, 87-88 (listing Dr. Bagner's report under "findings of  
19 fact" and giving it "[g]reat weight" for being "consistent with  
20 other medical findings")); see Tonapetyan, 242 F.3d at 1149  
21 (nonexamining physician's opinion constituted substantial  
22 evidence because it rested on examining physician's objective  
23 findings); Thomas, 278 F.3d at 957 ("The opinions of non-treating  
24 or non-examining physicians may also serve as substantial  
25 evidence when the opinions are consistent with independent  
26 clinical findings or other evidence in the record."). Thus, the  
27 ALJ permissibly discounted Dr. Washington's opinion because it  
28 was inconsistent with the record evidence. See Batson, 359 F.3d

1 at 1195 (ALJ may discredit treating physicians' opinions that are  
2 "unsupported by the record as a whole").

3 Further, Dr. Washington's opinion was not supported by her  
4 own treatment notes. At the hearing, the ALJ asked if there were  
5 any treatment records after June 6, 2012, and Plaintiff's  
6 attorney noted that he had requested the records and was  
7 rerequesting them. (AR 50.) The ALJ held the record open for 30  
8 days after the hearing to allow Plaintiff to submit those  
9 treatment notes (AR 71), but she did not do so. They were also  
10 not submitted to the Appeals Council. (See AR 5 (citing AR  
11 199).) The only treatment note in the record from Dr. Washington  
12 is the May 23, 2013 progress report (AR 289), and the only  
13 medical opinion from Dr. Washington is the July 16 RFC check-box  
14 questionnaire (AR 291-95). The RFC form provides no analysis or  
15 support for the check-box findings. (See generally id.) The ALJ  
16 properly relied on the apparent lack of treatment history and  
17 examination findings to discount Dr. Washington's opinion. See  
18 Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (ALJ may  
19 permissibly reject check-off reports that do not contain  
20 explanation of basis for conclusions); Connett v. Barnhart, 340  
21 F.3d 871, 875 (9th Cir. 2003) (treating physician's opinion  
22 properly rejected when treatment notes "provide[d] no basis for  
23 the functional restrictions he opined should be imposed on  
24 [plaintiff]"); Batson, 359 F.3d at 1195 ("[A]n ALJ may discredit  
25 treating physicians' opinions that are conclusory, brief, and  
26 unsupported by the record as a whole . . . or by objective  
27 medical findings[.]").

28 Because the ALJ provided specific and legitimate reasons for

1 giving Dr. Washington's opinion limited weight, remand is not  
2 warranted.

3 **VI. CONCLUSION**

4 Consistent with the foregoing, and under sentence four of 42  
5 U.S.C. § 405(g),<sup>9</sup> IT IS ORDERED that judgment be entered  
6 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's  
7 request for remand, and DISMISSING this action with prejudice.

8  
9 DATED: November 10, 2016

  
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10 JEAN ROSENBLUTH  
11 U.S. Magistrate Judge  
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25 \_\_\_\_\_  
26 <sup>9</sup> That sentence provides: "The [district] court shall have  
27 power to enter, upon the pleadings and transcript of the record,  
28 a judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."