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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANN VIRGINIA ARZU,
Plaintiff,
v.
NANCY A. BERRYHILL, Deputy
Commissioner for Operations of Social
Security Administration,
Defendant.

Case No. CV 16-4665-SP

MEMORANDUM OPINION AND
ORDER

I.

INTRODUCTION

On June 27, 2016, plaintiff Ann Virginia Arzu filed a complaint against defendant, the Commissioner of the Social Security Administration (“Commissioner”), seeking a review of a denial of supplemental security income. The parties have fully briefed the matters in dispute, and the court deems the matter suitable for adjudication without oral argument.

Plaintiff effectively presents three disputed issues for decision: (1) whether the Administrative Law Judge (“ALJ”) adequately considered plaintiff’s mental

1 health symptoms and limitations as evidenced in treating records; (2) whether the
2 ALJ properly rejected plaintiff's subjective complaints presented in her testimony;
3 and (3) whether the ALJ properly determined at step five that plaintiff could
4 perform a significant number of jobs. Memorandum in Support of Complaint ("P.
5 Mem.") at 2-9; *see* Memorandum in Support of Defendant's Answer ("D. Mem.")
6 at 3-13.

7 Having carefully studied the parties' memoranda on the issues in dispute, the
8 Administrative Record ("AR"), and the decision of the ALJ, the court concludes
9 that, as detailed herein, the ALJ properly considered the plaintiff's mental health
10 symptoms, properly rejected plaintiff's subjective complaints, and properly
11 determined plaintiff could perform a significant number of jobs. Consequently, the
12 court affirms the decision of the Commissioner denying benefits.

13 II.

14 **FACTUAL AND PROCEDURAL BACKGROUND**

15 Plaintiff, who was forty years old on the alleged disability onset date,
16 completed two years of college. AR at 71, 293. Plaintiff last worked in 2004 as a
17 custodian. *Id.* at 79. Plaintiff's date last insured was December 31, 1998. *Id.* at
18 166.

19 On November 7, 2012, plaintiff filed applications for disability insurance
20 benefits ("DIB") and supplemental security income ("SSI"). AR at 166; *see id.* at
21 139, 145. Plaintiff alleged a disability onset date of July 17, 2004 due to knee
22 injury, diabetes, high blood pressure, depression, cholesterol, and vision problem.
23 *Id.* at 71, 165. The Commissioner denied plaintiff's applications on June 7, 2013.
24 *Id.* at 82-86.

25 Plaintiff filed a written request for hearing on July 22, 2013. *Id.* at 89. On
26 August 25, 2014, plaintiff, represented by counsel, appeared and testified at a
27 hearing before the ALJ. *Id.* at 37-60. The ALJ also heard testimony from Ronald
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1 Hatakeyama, a vocational expert (“VE”). *Id.* at 54-60. On October 24, 2014, the
2 ALJ denied plaintiff’s claim for benefits. *Id.* at 19-30.

3 The ALJ found plaintiff meets the insured status requirements of the Social
4 Security Act through December 31, 1998. *Id.* at 21. The ALJ then employed the
5 well-known five-step sequential evaluation process. At step one, the ALJ found
6 that plaintiff had not engaged in substantial gainful activity since July 17, 2004, the
7 alleged onset date. *Id.*

8 At step two, the ALJ found plaintiff suffered from the following severe
9 impairments: hypertension, diabetes mellitus, lumbar strain, affective disorder, and
10 alcohol abuse. *Id.* at 21. The ALJ noted that plaintiff’s knee and vision problems
11 are non-severe impairments. *Id.* at 22. Further, the ALJ noted that plaintiff’s
12 schizophrenia with paranoia is not a medically determinable impairment, finding
13 “it is not supported by the medical evidence record” and “[t]here is no work up for
14 it, only an unsupported diagnosis.” *Id.*

15 At step three, the ALJ found plaintiff’s impairments, whether individually or
16 in combination, did not meet or medically equal one of the listed impairments set
17 forth in 20 C.F.R. Part 404, Subpart P, Appendix 1 (the “Listings”). *Id.*

18 The ALJ then assessed plaintiff’s residual functional capacity (“RFC”),¹ and
19 determined she had the RFC to perform light work, and had the limitations that she
20 could: occasionally lift and carry 20 pounds and frequently lift and carry up to 10
21 pounds; stand and walk six hours in an eight-hour workday; sit six hours in an
22 eight-hour workday; and frequently kneel, crouch, stoop, and crawl. *Id.* at 24. The
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25 ¹ Residual functional capacity is what a claimant can do despite existing
26 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155-
27 56 n.5-7 (9th Cir. 1989). “Between steps three and four of the five-step evaluation,
28 the ALJ must proceed to an intermediate step in which the ALJ assesses the
claimant’s residual functional capacity.” *Massachi v. Astrue*, 486 F.3d 1149, 1151
n.2 (9th Cir. 2007).

1 ALJ also limited plaintiff to jobs that would require no more than occasional
2 contact with the general public, co-workers, or supervisors. *Id.*

3 The ALJ found, at step four, that plaintiff could not perform her past
4 relevant work as an industrial cleaner. *Id.* at 28.

5 At step five, considering plaintiff's age, education, work experience, and
6 RFC, the ALJ found there were jobs that existed in significant numbers in the
7 national economy that plaintiff could perform, including housekeeping cleaner,
8 assembler of small products I, and office helper. *Id.* at 29-30. Consequently, the
9 ALJ concluded plaintiff did not suffer from a disability as defined by the Social
10 Security Act ("Act" or "SSA") from July 17, 2004 through the date of the decision.
11 *Id.* at 30.

12 Plaintiff timely filed a request for review of the ALJ's unfavorable decision,
13 which the Appeals Council denied on May 6, 2016. *Id.* at 1-3, 7. The ALJ's
14 decision stands as the final decision of the Commissioner.

15 III.

16 STANDARD OF REVIEW

17 This court is empowered to review decisions by the Commissioner to deny
18 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security
19 Administration must be upheld if they are free of legal error and supported by
20 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)
21 (as amended). But if the court determines that the ALJ's findings are based on
22 legal error or are not supported by substantial evidence in the record, the court may
23 reject the findings and set aside the decision to deny benefits. *Aukland v.*
24 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d
25 1144, 1147 (9th Cir. 2001).

26 "Substantial evidence is more than a mere scintilla, but less than a
27 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such
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1 “relevant evidence which a reasonable person might accept as adequate to support
2 a conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276
3 F.3d at 459. To determine whether substantial evidence supports the ALJ’s
4 finding, the reviewing court must review the administrative record as a whole,
5 “weighing both the evidence that supports and the evidence that detracts from the
6 ALJ’s conclusion.” *Mayes*, 276 F.3d at 459. The ALJ’s decision “cannot be
7 affirmed simply by isolating a specific quantum of supporting evidence.”
8 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th
9 Cir. 1998)). If the evidence can reasonably support either affirming or reversing
10 the ALJ’s decision, the reviewing court “may not substitute its judgment for that
11 of the ALJ.” *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.
12 1992)).

13 IV.

14 DISCUSSION

15 With regard to the DIB application, plaintiff concedes she has not
16 established eligibility before the DLI. P. Mem. at 2. But plaintiff alleges she is
17 eligible for SSI benefits. *Id.* Plaintiff argues that in denying her SSI application,
18 the ALJ failed to adequately consider plaintiff’s mental health symptoms and
19 limitations as submitted in treating records and that the ALJ improperly rejected
20 plaintiff’s testimony. P. Mem. at 2-7. Specifically, plaintiff contends “the ALJ
21 failed to provide evaluation and discussion of the records from St. Johns and
22 Kedren Mental Health,” which support that plaintiff suffers from “Major
23 Depressive Disorder, Psychosis, as well as Schizophrenia and Bi-Polar Disorder.”
24 *Id.* at 3. Plaintiff further argues that as a result, based on his RFC determination,
25 the ALJ posed an improper hypothetical to the VE and improperly determined
26 plaintiff could perform a significant number of jobs. *Id.* at 7-9.

27 This court disagrees with plaintiff’s contentions. Review of the record
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1 indicates that there is substantial evidence to support the ALJ’s consideration of
2 plaintiff’s mental impairments and limitations. Further, the ALJ provided clear
3 and convincing reasons, supported by substantial evidence, for rejecting plaintiff’s
4 testimony. Consequently, the hypothetical the ALJ presented to the VE was
5 proper.

6 **A. The ALJ Did Not Err in Considering Plaintiff’s Mental Impairments**
7 **and Limitations**

8 Plaintiff first argues that the ALJ did not adequately consider plaintiff’s
9 mental impairments and limitations as presented by plaintiff’s treating physicians
10 when assessing her RFC. P. Mem. at 2.

11 RFC is what one can “still do despite [his or her] limitations.” 20 C.F.R.
12 § 416.945(a)(1)-(2).² The ALJ reaches an RFC determination by reviewing and
13 considering all of the relevant evidence, including non-severe impairments. *Id.*

14 In determining whether a claimant has a medically determinable impairment
15 and his or her RFC, among the evidence the ALJ considers is medical evidence. 20
16 C.F.R. § 416.927(b). In evaluating medical opinions, the regulations distinguish
17 among three types of physicians: (1) treating physicians; (2) examining
18 physicians; and (3) non-examining physicians. 20 C.F.R. § 416.927(c), (e); *Lester*
19 *v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (as amended). “Generally, a treating
20 physician’s opinion carries more weight than an examining physician’s, and an
21 examining physician’s opinion carries more weight than a reviewing physician’s.”
22 *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001); 20 C.F.R.
23 § 416.927(c)(1)-(2). The opinion of the treating physician is generally given the
24 greatest weight because the treating physician is employed to cure and has a greater
25 opportunity to understand and observe a claimant. *Smolen v. Chater*, 80 F.3d

27 ² All citations to the Code of Federal Regulations refer to regulations
28 applicable to claims filed before March 27, 2017.

1 1273, 1285 (9th Cir. 1996); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
2 1989).

3 Nevertheless, the ALJ is not bound by the opinion of the treating physician.
4 *Smolen*, 80 F.3d at 1285. If a treating physician’s opinion is uncontradicted, the
5 ALJ must provide clear and convincing reasons for giving it less weight. *Lester*,
6 81 F.3d at 830. If the treating physician’s opinion is contradicted by other
7 opinions, the ALJ must provide specific and legitimate reasons supported by
8 substantial evidence for rejecting it. *Id.* at 830. Likewise, the ALJ must provide
9 specific and legitimate reasons supported by substantial evidence for rejecting the
10 contradicted opinions of examining physicians. *Id.* at 830-31. The opinion of a
11 non-examining physician, standing alone, cannot constitute substantial evidence.
12 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 n.2 (9th Cir. 2006); *Morgan v.*
13 *Comm’r*, 169 F.3d 595, 602 (9th Cir. 1999); *see also Erickson v. Shalala*, 9 F.3d
14 813, 818 n.7 (9th Cir. 1993).

15 Here, plaintiff alleges that she suffers from major depressive disorder,
16 psychosis, schizophrenia and bi-polar disorder. P. Mem. at 3. But plaintiff’s
17 allegation that she suffers from psychosis and bi-polar disease is new. It appears
18 her sole argument to support these claimed conditions is that she was prescribed
19 with medication that treats them. *See id.* at 3-4. Plaintiff does not cite to the
20 record to support her claim the medication was prescribed to treat those conditions.
21 In fact, review of the record reflects that plaintiff was not diagnosed with psychosis
22 or bi-polar disease at any point.

23 With regard to schizophrenia, the ALJ found her condition is not a medically
24 determinable impairment because it is not supported by the medical evidence as a
25 whole. AR at 22. Specifically, the ALJ noted “[t]here is no work up for it, only an
26 unsupported diagnosis.” *Id.* There is substantial evidence in the record to support
27 the ALJ’s finding.

1 Plaintiff received therapy at Kedren Community Mental Health Center
2 (“Kedren”) at times from March 2012 to June 2, 2014. The medical record and
3 progress notes show that plaintiff did not complain of schizophrenia and doctors
4 did not diagnose plaintiff with schizophrenia. *See id.* at 187-217, 435-49. Plaintiff
5 also received treatment at St. John’s Well Child and Family Center (“St. John”)
6 between July 2011 and April 7, 2014. Again, plaintiff did not complain of
7 schizophrenia and doctors did not diagnose plaintiff with schizophrenia. *See id.* at
8 218-80, 301-434. During a March 23, 2012 visit, schizophrenia is listed under
9 plaintiff’s past medical history for the first time. *Id.* at 305. The illness remains
10 under plaintiff’s past medical history during future visits, but there is no evidence
11 of plaintiff being treated for or complaining of schizophrenia. *See, e.g., id.* at 305-
12 06, 336-39, 350-52, 356-57, 369-71, 416-19, 422-24. In fact, during two visits in
13 2013, plaintiff was asked about the schizophrenia listing and both times she denied
14 having schizophrenia. *Id.* at 418, 424.

15 Therefore, the ALJ did not err by not including psychosis, bi-polar disorder,
16 or schizophrenia as one of plaintiff’s medically determinable impairments. But
17 while not finding plaintiff suffered from those mental impairments, the ALJ did
18 find plaintiff’s depression to be a medically determinable impairment, specifically
19 finding plaintiff had a severe affective disorder impairment. *Id.* at 21. And
20 plaintiff took this impairment into account in assessing plaintiff’s RFC.

21 The ALJ determined plaintiff was limited to jobs that would require no more
22 than occasional contact with the general public, co-workers, or supervisors. *Id.* at
23 24. In reaching his RFC determination, the ALJ discussed all of the medical
24 history, and gave significant weight to, among others, the opinions of examining
25 psychiatrist Dr. Raymond Yee, M.D., and DDS psychological medical consultant
26 Stephen Bailey, Ed.D. *Id.* at 27-28. Dr. Yee found plaintiff had no “impairment in
27 functioning from any psychiatric disorder,” and no limitations on what she could
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1 do at work. *Id.* at 26-27, 296-97. Dr. Bailey opined based on his review of the
2 medical records that plaintiff did have an affective disorder impairment but it was
3 non-severe, with her depression symptoms well controlled by medication. *Id.* at
4 27, 76. Thus, in finding plaintiff’s affective disorder was a severe impairment and
5 in limiting plaintiff to no more than occasional contact with the public, co-workers,
6 and supervisors, the ALJ found plaintiff more limited than Dr. Yee or Dr. Bailey
7 found her to be.

8 Plaintiff argues the ALJ nonetheless erred because he failed to adequately
9 consider the opinion of plaintiff’s treating physicians at St. John and Kedren. P.
10 Mem. at 3. Specifically, plaintiff contends “[t]here is little if any consideration of
11 [plaintiff’s] mental problems and her ability to sustain work activity.” *Id.* This
12 contention is not supported by the record.

13 The ALJ specifically noted he took into account the medical record when
14 assessing plaintiff’s RFC, and found that there was a “lack of findings and
15 sporadic, conservative, routine treatment.” *Id.* at 28; *see id.* at 25-26. The ALJ
16 cited to several mental exams that yielded normal findings. *Id.* at 26 (citing to
17 mental exams that took place in October 2011, March and May 2012, and January,
18 April, May, July, and December of 2013). There is substantial evidence in the
19 medical record to support the ALJ’s finding. For instance, on September 1, 2011,
20 plaintiff visited St. John where a mental status exam reflected that her judgment
21 and insight were intact; she was oriented to time, place, and person; her memory
22 was intact for recent and remote events; and there were no signs of depression,
23 anxiety, or agitation.” *Id.* at 331. During plaintiff’s visits to St. John between
24 2011 and 2014, all but one psychological evaluation listed a low depression
25 severity and found that plaintiff was alert and cooperative, and that her mood,
26 affect, attention and concentration were normal. *Compare id.* at 305-06, 326, 339,
27 352, 370, 410 (mental exams yielding normal results), *with id.* at 374-75 (mental
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1 exam results finding “depressed affect and agitated, teary at times” and
2 “Depression severity: Mild”).

3 The ALJ also noted plaintiff had only sporadic outpatient mental health
4 therapy counseling in 2012 and 2014. *Id.* at 26. This is shown in the record
5 reflecting her visits to Kedren three times in March of 2012 and roughly once a
6 month between January and June 2014. *Id.* at 187-217, 435-449. Plaintiff also
7 asserts that she visited St. John for her mental impairment; however, the treatment
8 notes reflect that other than to obtain a prescription refill, her visits to St. John
9 were not in connection to her mental impairments. *See id.* at 292-391.

10 In short, it is clear the ALJ properly considered all the medical evidence.
11 Further, there were no limitations opined by treating or other physicians greater
12 than those found by the ALJ. The ALJ’s findings were supported by substantial
13 evidence in the record. Accordingly, the ALJ properly determined plaintiff’s
14 mental impairments and RFC.

15 **B. The ALJ Offered Clear and Convincing Reasons Supported by**
16 **Substantial Evidence for Discounting the Subjective Evidence**

17 Plaintiff also argues the ALJ provided no valid reason for rejecting
18 plaintiff’s subjective complaints and disregarding the nature of her mental
19 condition. P. Mem. at 7.

20 When assessing a plaintiff’s credibility, the ALJ must engage in a two-step
21 analysis. *Trevizo v. Berryhill*, 862 F.3d 987, 1000 (9th Cir. 2017) (citing *Garrison*
22 *v. Colvin*, 759 F.3d 995, 1014-15 (9th Cir. 2014)). First, the ALJ must determine if
23 there is medical evidence of an impairment that could reasonably produce the
24 symptoms alleged. *Id.* “If such evidence exists and there is no evidence of
25 malingering, the ALJ can reject the claimant’s testimony about the severity of her
26 symptoms only by offering specific, clear and convincing reasons for doing so,”
27 and those reasons must be supported by substantial evidence in the record. *Id.*;
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1 *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1161 (9th Cir. 2008).

2 In weighing plaintiff’s credibility, the ALJ may consider many factors,
3 including: “(1) ordinary techniques of credibility evaluation, such as the claimant’s
4 reputation for lying, prior inconsistent statements concerning the symptoms, and
5 other testimony . . . that appears less than candid; (2) unexplained or inadequately
6 explained failure to seek treatment or to follow a prescribed course of treatment;
7 and (3) the claimant’s daily activities.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1039
8 (9th Cir. 2008). But “subjective pain testimony cannot be rejected on the *sole*
9 ground that it is not fully corroborated by objective medical evidence.” *Rollins v.*
10 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (emphasis added) (citation omitted).
11 The ALJ must also “specifically identify the testimony [from the claimant that] she
12 or he finds not to be credible and . . . explain what evidence undermines the
13 testimony.” *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014)
14 (quoting *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001)).

15 Here, plaintiff testified that her impairments prevent her from working.
16 Specifically, with regard to her mental impairments, plaintiff stated that she is
17 being treated for depression and she is unable to maintain any mood stability. *Id.*
18 at 41. Plaintiff also alleges that she hears voices that follow her and she sometimes
19 responds and yells at the voices. *Id.* at 41, 51.

20 At the first stage of his credibility analysis, the ALJ found that plaintiff’s
21 medically determinable impairments could reasonably be expected to cause the
22 alleged symptoms. AR 25. At the second stage, the ALJ found that plaintiff’s
23 statements concerning the intensity, persistence and limiting effects of her
24 symptoms are “not entirely credible.” *Id.*

25 The first reason the ALJ provided for finding plaintiff’s subjective claims to
26 be not entirely credible is that the “medical evidence record shows very little
27 treatment” for plaintiff’s medical condition. *Id.* at 25-26. The ALJ specifically
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1 indicated that the records “reflect sporadic outpatient mental health therapy
2 counseling in 2012 and 2014. *Id.* at 26. There is substantial evidence in the record
3 to support this finding. Plaintiff testified that she receives therapy for her
4 depression at Kedren, and plaintiff informed the treating physician at St. John that
5 she receives therapy at Kedren. *Id.* at 45, 50, 424. As discussed above, the record
6 reflects plaintiff visited Kedren just three times in March of 2012 and roughly once
7 a month between January and June 2014. *Id.* at 187-217, 435-449. But a
8 claimant’s failure to seek mental health treatment is not necessarily a clear and
9 convincing reason to find him less credible because “those afflicted [with
10 depression] often do not recognize that their condition reflects a potentially serious
11 mental illness.” *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996); *accord*
12 *Allen v. Comm’r*, 498 Fed. Appx. 696, 697 (9th Cir. 2012) (the “[f]ailure to seek
13 treatment is not a substantial basis on which to conclude that a claimant’s mental
14 impairment is not severe”). Moreover, here, plaintiff did seek some treatment.
15 Nonetheless, while this reason is not clear and convincing by itself, it is consistent
16 with the evidence in the record that plaintiff’s need for treatment was minimal.

17 In particular, the second reason the ALJ gave for discounting plaintiff’s
18 credibility is that the medical evidence in the record and the medical opinion
19 evidence undermined plaintiff’s testimony about the severity of her impairments
20 and their limiting effects. *Id.* at 25. The ALJ noted the record reflects normal
21 findings for plaintiff’s mental exams. *Id.* at 26. As discussed above, during her
22 visits to St. John between 2011 and 2014, all but one psychological evaluation
23 listed a low depression severity and found that plaintiff was alert and cooperative,
24 and that her mood, affect, attention and concentration were normal. *Compare id.* at
25 305-06, 326, 339, 352, 370, 410 (mental exams yielding normal results), *with id.* at
26 374-75 (mental exam results finding “depressed affect and agitated, teary at times”
27 and “Depression severity: Mild”). The ALJ also cited to Dr. Yee’s finding of lack
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1 of psychiatric impairment. *Id.* at 26; *see id.* at 296. Dr. Yee found plaintiff had
2 “good grooming and good hygiene,” she was “polite, cooperative and friendly,”
3 her speech was “productive and coherent,” her mood and affect were appropriate,
4 and she did not have mood swings. *Id.* at 294-95. Moreover, Dr. Yee observed
5 that her intellectual functioning, fund of knowledge, concentration, insight and
6 judgment were all normal. *Id.* at 295. Dr. Yee concluded plaintiff’s cognition is
7 intact and she could perform detailed and complex tasks, maintain regular
8 attendance and perform work consistently, complete a normal workday and
9 workweek, accept instruction from supervisors, interact with coworkers and the
10 public, and that she could deal with the usual stressors of competitive employment.
11 *Id.* at 296. Additionally, the ALJ relied on the opinion of Dr. Bailey, who opined
12 that plaintiff’s mental impairment was non-severe because she was not
13 hospitalized, she reported she was doing well on her medication, and she had no
14 problems with activities of daily living and daily functioning. *Id.* at 26; *see id.* at
15 76. Therefore, there is substantial evidence to support the ALJ’s finding that
16 medical and opinion evidence undermines plaintiff’s credibility, and this was a
17 clear and convincing reason.

18 Finally, the ALJ found plaintiff’s “demeanor and testimony at the hearing”
19 undermined the credibility of her allegations regarding her symptoms. *Id.* at 28;
20 *see Matney*, 981 F.2d at 1020 (holding the ALJ did not err in relying on claimant’s
21 “demeanor and appearance at the hearing” when evaluating subjective complaints
22 of pain). The ALJ explained:

23 at the hearing, [plaintiff] was lucid and responsive to questioning. Her
24 answers demonstrated good memory recall and logical thinking, as her
25 answers were relevant and responsive. Her demeanor and testimony
26 also reflected good social interaction and concentration, persistence
27 and pace. She was cooperative, voluntarily offered information, and
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1 seemed at ease with the hearing process.

2 *Id.* at 28. This too was a clear and convincing reason to discount plaintiff's
3 credibility.

4 Accordingly, the ALJ properly found plaintiff's testimony to be not entirely
5 credible in that he provided two clear and convincing reasons supported by
6 substantial evidence for doing so.

7 **C. The ALJ Did Not Err at Step Five**

8 Plaintiff argues the ALJ erred at step five. Specifically, plaintiff argues that
9 as a result of inadequate evaluation of the mental impairment, the ALJ failed to
10 properly question the vocational expert with respect to plaintiff's mental
11 limitations, and so erred in relying on that testimony to find plaintiff could perform
12 a significant number of jobs. P. Mem. at 8.

13 At step five, the burden shifts to the Commissioner to show that the claimant
14 retains the ability to perform other gainful activity. *Lounsbury v. Barnhart*, 468
15 F.3d 1111, 1114 (9th Cir. 2006). To support a finding that a claimant is not
16 disabled at step five, the Commissioner must provide evidence demonstrating other
17 work exists in significant numbers in the national economy that the claimant can
18 perform, given his or her age, education, work experience, and RFC. 20 C.F.R. §
19 416.912(f). The Commissioner may satisfy this burden through the testimony of a
20 vocational expert. *Lounsbury*, 468 F.3d at 1114. In response to a hypothetical
21 that includes the limitations the ALJ found credible, a VE may testify as to "(1)
22 what jobs the claimant, given his or her [RFC], would be able to do; and (2) the
23 availability of such jobs in the national economy." *Tackett v. Apfel*, 180 F.3d
24 1094, 1101 (9th Cir. 1999).

25 Here, the ALJ posed a hypothetical person to the VE with the same
26 limitations as in the RFC the ALJ determined for plaintiff, and the VE testified
27 such person could perform the jobs of housekeeping cleaner, assembler of small
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1 products, and office helper. AR at 59. Plaintiff's argument of error in the step five
2 determination depends on her argument that the ALJ erred in determining
3 plaintiff's RFC. As discussed above, the court finds the ALJ properly evaluated
4 plaintiff's mental impairment and properly determined plaintiff's RFC.
5 Accordingly, the hypothetical question the ALJ presented to the VE and the ALJ's
6 questioning of the VE was proper, and there was no error at step five.

7 V.

8 **CONCLUSION**

9 IT IS THEREFORE ORDERED that Judgment shall be entered
10 AFFIRMING the decision of the Commissioner denying benefits, and dismissing
11 the complaint with prejudice.

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13 DATED: May 31, 2018



14
15 SHERI PYM
United States Magistrate Judge