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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NORMA PALLANES,)	Case No. EDCV 10-187-OP
)	
Plaintiff,)	MEMORANDUM OPINION; ORDER
v.)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

The Court¹ now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).²

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¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (See Dkt. Nos. 6, 9.)

² As the Court advised the parties in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record (“AR”), and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g).

1 I.

2 **DISPUTED ISSUES**

3 As reflected in the Joint Stipulation, the disputed issues which Plaintiff
4 raises as the grounds for reversal and/or remand are as follows:

- 5 1. Whether the Administrative Law Judge (“ALJ”) properly considered
6 the opinion of the treating psychiatrist; and
7 2. Whether the ALJ posed an incomplete hypothetical to the vocational
8 expert (“VE”).

9 (JS at 2.)

10 II.

11 **STANDARD OF REVIEW**

12 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision
13 to determine whether the Commissioner’s findings are supported by substantial
14 evidence and whether the proper legal standards were applied. DeLorme v.
15 Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more
16 than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402
17 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of
18 Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial
19 evidence is “such relevant evidence as a reasonable mind might accept as adequate
20 to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The
21 Court must review the record as a whole and consider adverse as well as
22 supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).
23 Where evidence is susceptible of more than one rational interpretation, the
24 Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450,
25 1452 (9th Cir. 1984).

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1 III.

2 DISCUSSION

3 A. The ALJ Properly Considered and Rejected the Opinion of Plaintiff's
4 Treating Psychiatrist.

5 Plaintiff contends that the ALJ failed to provide specific and legitimate
6 reasons, supported by substantial evidence, to reject the opinion of treating
7 psychiatrist, Jesus A. Bucardo, M.D. Specifically, Plaintiff challenges the ALJ's
8 rejection of Dr. Bucardo's opinion, as stated in a February 5, 2008, Narrative
9 Report, that Plaintiff was "unable to complete a 40 hour work week without
10 decompensating and [that] her prognosis was guarded." (JS at 3-5, 7-8 (quoting
11 AR at 12.) The Court disagrees.

12 It is well-established in the Ninth Circuit that a treating physician's opinions
13 are entitled to special weight, because a treating physician is employed to cure and
14 has a greater opportunity to know and observe the patient as an individual.
15 McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989). "The treating
16 physician's opinion is not, however, necessarily conclusive as to either a physical
17 condition or the ultimate issue of disability." Magallanes v. Bowen, 881 F.2d 747,
18 751 (9th Cir. 1989). The weight given a treating physician's opinion depends on
19 whether it is supported by sufficient medical data and is consistent with other
20 evidence in the record. See 20 C.F.R. § 404.1527(d)(2). If the treating
21 physician's opinion is uncontroverted by another doctor, it may be rejected only
22 for "clear and convincing" reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.
23 1995); Baxter v. Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991). If the treating
24 physician's opinion is controverted, it may be rejected only if the ALJ makes
25 findings setting forth specific and legitimate reasons that are based on the
26 substantial evidence of record. Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
27 2002); Magallanes, 881 F.2d at 751; Winans v. Bowen, 853 F.2d 643, 647 (9th
28 Cir. 1987).

1 However, the Ninth Circuit also has held that “[t]he ALJ need not accept the
2 opinion of any physician, including a treating physician, if that opinion is brief,
3 conclusory, and inadequately supported by clinical findings.” Thomas, 278 F.3d
4 at 957; see also Matney ex rel. Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir.
5 1992). A treating or examining physician’s opinion based on the plaintiff’s own
6 complaints may be disregarded if the plaintiff’s complaints have been properly
7 discounted. Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 602 (9th Cir.
8 1999); see also Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997); Andrews
9 v. Shalala, 53 F.3d 1035, 1043 (9th Cir. 1995). Additionally, “[w]here the opinion
10 of the claimant’s treating physician is contradicted, and the opinion of a
11 nontreating source is based on independent clinical findings that differ from those
12 of the treating physician, the opinion of the nontreating source may itself be
13 substantial evidence; it is then solely the province of the ALJ to resolve the
14 conflict.” Andrews, 53 F.3d at 1041; Magallanes, 881 F.2d at 751; Miller v.
15 Heckler, 770 F.2d 845, 849 (9th Cir. 1985).

16 As noted by Plaintiff, in his February 5, 2008, report, Dr. Bucardo
17 concluded that due to major depressive disorder with psychotic features, Plaintiff
18 would be unable to complete a forty-hour work week without decompensating. In
19 addition, he assessed her prognosis as “guarded.” (AR at 305.)

20 The ALJ considered Dr. Bucardo’s opinion, determined it was entitled to
21 only limited weight, and provided specific and legitimate reasons for rejecting the
22 opinion. (AR at 16, 21-23.) Specifically, the ALJ rejected Dr. Bucardo’s opinion
23 because “[t]he statement is inconsistent with records from the same provider later
24 that same month and for subsequent months that the claimant was stable, her
25 medication was effective, and her mental health status examinations were
26 appropriate.” (Id. at 12.)

27 The record supports the ALJ’s contention. On December 27, 2007, less than
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1 two months before stating on the Narrative Report that Plaintiff could not perform
2 a forty-hour work week and that her condition was “guarded,” Dr. Bucardo
3 reported that Plaintiff’s mental status examination resulted in “appropriate”
4 findings and that she was “stable.” (Id. at 328.) On February 20, 2008, just fifteen
5 days after his February 5, 2008, report, Dr. Bucardo reported that Plaintiff’s
6 mental status examination was again “appropriate” and that she was still “stable.”
7 (Id. at 296.) On April 21, 2008, Dr. Bucardo noted that he intended to continue
8 the same plan for Plaintiff’s treatment. (Id. at 295, 313.) On June 3, 2008, Dr.
9 Bucardo again reported “appropriate” findings on Plaintiff’s mental status
10 examination and assessed her as “stable.” (Id. at 294.) Dr. Bucardo noted at that
11 time that Plaintiff’s mood and anxiety were “overall controlled.” (Id.)

12 In addition to Dr. Bucardo’s findings, the state of the medical evidence for
13 the period between late-2007 and mid-2008 indicates that Plaintiff’s mental health
14 was stable at that time and that her psychological symptoms were well controlled
15 with medication. (Id. at 27-41, 268-80, 303-04.) The entirety of this evidence
16 contradicts Dr. Bucardo’s February 5, 2008, opinion that Plaintiff was unable to
17 complete a forty-hour work week and that her prognosis was “guarded.”

18 Accordingly, the Court finds that the ALJ provided specific and legitimate
19 reasons, supported by substantial evidence in the record, to reject Dr. Bucardo’s
20 opinion. Thomas, 278 F.3d at 957; Andrews, 53 F.3d at 1041; Magallanes, 881
21 F.2d at 751; Miller, 770 F.2d at 849. Thus, there was no error.

22 **B. Hypothetical to the VE.**

23 In her second claim, Plaintiff contends that the ALJ failed to pose a
24 complete hypothetical question to the vocational expert because the ALJ’s
25 hypothetical did not include the limitations reflected in Dr. Bucardo’s February 5,
26 2008, report. (JS at 8-9, 10-11.)

27 “In order for the testimony of a VE to be considered reliable, the
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1 hypothetical posed must include ‘all of the claimant’s functional limitations, both
2 physical and mental’ supported by the record.” Thomas, 278 F.3d at 956 (quoting
3 Flores v. Shalala, 49 F.3d 562, 570-71 (9th Cir. 1995)). Hypothetical questions
4 posed to a VE need not include all alleged limitations, but rather only those
5 limitations which the ALJ finds to exist. See, e.g., Magallanes, 881 F.2d at
6 756-57; Copeland v. Bowen, 861 F.2d 536, 540 (9th Cir. 1988); Martinez v.
7 Heckler, 807 F.2d 771, 773-74 (9th Cir. 1986). As a result, an ALJ must propose
8 a hypothetical that is based on medical assumptions, supported by substantial
9 evidence in the record, that reflects the claimant’s limitations. Osenbrock v.
10 Apfel, 240 F.3d 1157, 1163-64 (9th Cir. 2001) (citing Roberts v. Shalala, 66 F.3d
11 179, 184 (9th Cir. 1995)); see also Andrews, 53 F.3d at 1043 (although the
12 hypothetical may be based on evidence which is disputed, the assumptions in the
13 hypothetical must be supported by the record).

14 As the Court concluded above, the ALJ properly rejected the opinions of Dr.
15 Bucardo as reflected in his February 5, 2008, report. Accordingly, the ALJ was
16 not obligated to include those limitations in his hypothetical to the vocational
17 expert. See, e.g., Magallanes, 881 F.2d at 756-57; Copeland, 861 F.2d at 540;
18 Martinez, 807 F.2d at 773-74. Thus, the ALJ did not err by presenting an
19 incomplete hypothetical question to the vocational expert.

20 IV.

21 ORDER

22 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be
23 entered affirming the decision of the Commissioner, and dismissing this action
24 with prejudice.
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26 Dated: October 12, 2010



27 HONORABLE OSWALD PARADA
28 United States Magistrate Judge