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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ZINA STEAGALL,  
  
Plaintiff,  
  
v.  
  
NANCY BERRYHILL,  
Acting Commissioner of the  
Social Security Administration,  
  
Defendant.

Case No. EDCV 16-00976 SS

**MEMORANDUM DECISION AND ORDER**

**I.  
INTRODUCTION**

Zina Steagall ("Plaintiff") brings this action seeking to overturn the decision by the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying her application for Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636, to the

1 jurisdiction of the undersigned United States Magistrate Judge.  
2 For the reasons stated below, the decision of the Commissioner is  
3 AFFIRMED.  
4

5 **II.**

6 **PROCEDURAL HISTORY**

7  
8 Plaintiff filed an application for SSI on July 23, 2012.  
9 (Administrative Record ("AR") 166). The Agency initially denied  
10 Plaintiff's claim for SSI on November 7, 2012. (AR 197). Plaintiff  
11 filed a Request for Reconsideration. (AR 203). The Agency denied  
12 the request for reconsideration. (AR 204). Plaintiff filed a  
13 Request for Hearing by Administrative Law Judge on July 26, 2013.  
14 (AR 211). On April 18, 2014, Administrative Law Judge ("ALJ")  
15 Tamara Turner-Jones conducted a hearing to review Plaintiff's  
16 claim. (AR 28-44). On October 23, 2014, ALJ Dana McDonald conducted  
17 a supplemental hearing. (AR 45-56). On November 7, 2014, ALJ  
18 McDonald found that Plaintiff was not disabled. (AR 7, 22).  
19 Plaintiff sought review of the ALJ's decision before the Appeals  
20 Council on November 26, 2014. (AR 5). On April 18, 2016, the  
21 Appeals Council denied review. (AR 1-3). As such, the ALJ's  
22 decision became the final decision of the Commissioner. (AR 1).  
23 Plaintiff commenced the instant action on May 12, 2016. (Dkt. No.  
24 1).

1 III.

2 FACTUAL BACKGROUND

3  
4 **A. Plaintiff's History**

5  
6 Plaintiff was born on July 13, 1967. (AR 20, 33). Plaintiff  
7 left school after completing the eleventh grade. (AR 876).  
8 Plaintiff worked as a hairstylist until 2007. (AR 508). At the  
9 April 2014 hearing, Plaintiff testified that she also previously  
10 worked in childcare, watching two young children for her sister-  
11 in-law. (AR 35-36). Plaintiff testified, however, that she stopped  
12 working because she heard voices telling her not to work. Plaintiff  
13 has not sought work since 2005 or 2006. (AR 36).  
14

15 Medical records dated July 2, 2014 note that Plaintiff has  
16 seven children between the ages of 14 and 26. (AR 876). While  
17 Plaintiff testified to living with her daughters (AR 34), medical  
18 records state that she lives with one daughter, her sister, her  
19 sister's children, as well as several pets. (AR 876).  
20

21 Plaintiff's May 17, 2013 medical records list "TANF, Food  
22 Stamps" under "Current Source of Income". (AR 508). Additionally,  
23 Plaintiff testified that she receives benefits for her minor  
24 children. (AR 38).  
25

26 Medical records from the Riverside County Department of Mental  
27 Health, Alcohol and Drug Services, dated January 14, 2013 state  
28 that Plaintiff's mother denied that Plaintiff had any current or

1 past use of alcohol or street drugs. (AR 716). However, an  
2 Emergency Room Continuation of Care Report dated February 9, 2013  
3 notes that Plaintiff "was brought in by Emergency Medical Services,  
4 secondary to doing PCP today" (AR 800) and that Plaintiff "stated  
5 she smoked some PCP and [] doesn't remember what happen[ed]." (AR  
6 804). Medical records from this date also list "drug use" under  
7 "Past Medical History". (AR 803).

8  
9 On May 17, 2013, Plaintiff denied substance abuse to  
10 consultative physician Dr. Paul Martin. However, Dr. Martin's  
11 comments state that "her behavior on exam certainly raises concerns  
12 regarding this area." (AR 507-508).

13  
14 On August 5, 2013, an Emergency Room Continuation of Care  
15 Report notes that Plaintiff's "urine drugs screen" tested positive  
16 for PCP. (AR 774). Additionally, an August 10, 2013 Emergency  
17 Room Report notes PCP abuse under past medical history. (AR 766).  
18 This same report states that Plaintiff had been discharged from  
19 Menifee Valley Medical Center a few days prior with a diagnosis of  
20 "altered level of consciousness and delirium, secondary to PCP []  
21 abuse." (AR 767).

22  
23 On August 13, 2013, another Emergency Room Report states that  
24 Plaintiff came in complaining of severe pain and wanting pain  
25 medications, however had "slurred speech" and "was positive for  
26 PCP". (AR 763).

1 Mental health records from August 16, 2013 note that  
2 Plaintiff's landlord reported concerns about Plaintiff's well-  
3 being. Specifically, the landlord reported that she had recently  
4 seen Plaintiff and that she "could hardly talk and appeared to be  
5 under the influence of medications that made her look 'out of it'.  
6 [The Landlord] verbalized concern that [Plaintiff] was driving in  
7 this condition and that she also drove her two children this way  
8 as well." (AR 691). Case management records from January 2013  
9 indicate that Plaintiff received a DUI while driving under the  
10 influence of her prescription medications. (AR 684).

11  
12 On October 8, 2013, Plaintiff stated during an interview that  
13 she "'had just started using PCP this past year', but that she 'has  
14 been clean for x4 months.' Later, during the interview [Plaintiff]  
15 stated that she 'has been using [PCP] a long time.'" (AR 687).  
16 She further stated that she "hears voices ('not now, I took my  
17 meds') that tell her to use." (Id.). That same day, Plaintiff  
18 "stated that she has been clean and sober for x45 days from PCP"  
19 and expressed "how she feels she 'gets worse when using' and 'the  
20 voices tell her to do bad things, worse when on PCP.'" Plaintiff  
21 also denied auditory or visual hallucinations. However, she stated  
22 that she experiences hallucinations when not on her medication.  
23 (AR 688). Additionally, notes from Plaintiff's group mental health  
24 service on April 8, 2014 state that Plaintiff "checked into group,  
25 introduced herself, drug of choice as PCP". (AR 894).

26  
27 Notes from Plaintiff's orthopedic consultation with Dr. Mario  
28 Luna on June 30, 2014 report, however, that Plaintiff "has never

1 used drugs". (AR 864). Likewise, on July 2, 2014, Plaintiff had  
2 a psychological evaluation with Dr. Kathy Vandenburg. Under  
3 "Habits," Dr. Vandenburg's report states that Plaintiff "denies a  
4 history of drug or alcohol abuse." (AR 877).

5  
6 Under "Legal," this report also states that Plaintiff "reports  
7 a history of incarceration in prison for two years in 2003 due to  
8 trying to hurt somebody else." (Id.). Medical records from May  
9 17, 2013 similarly state that plaintiff "acknowledged some  
10 involvement with the legal system, including serving a prison term,  
11 but she would not elaborate on the details." (AR 508).

12  
13 Plaintiff's July 23, 2012 application for SSI alleged  
14 disability beginning on March 27, 2007 due to a variety of  
15 conditions, including asthma, hypertension, and severe carpal  
16 tunnel syndrome. (AR 166). Beginning in January 2013, Plaintiff  
17 sought mental health treatment and participated in group therapy.  
18 (AR 648-720, 891-898). Treatment notes indicate that Plaintiff  
19 exhibited restless motor activity, illogical thought processes,  
20 bizarre thought content, paranoid delusions, auditory and visual  
21 hallucinations, poor eye contact, irritability and a depressed  
22 mood. (AR 648-702). On February 20, 2013, Plaintiff received a  
23 diagnosis of "psychosis, NOS." (AR 675).

24  
25 **B. Plaintiff's Testimony**

26  
27 On April 18, 2014, Plaintiff testified about her work history,  
28 symptoms, and limitations in response to the ALJ's questions. (AR

1 32-43). Plaintiff testified that she could no longer work due to  
2 back pain, auditory hallucinations and difficulty being around  
3 others. (AR 42-43). In reference to her imaginary person,  
4 Plaintiff stated that "Susan tells me don't work. She doesn't want  
5 me to do anything. Susan just wants me all to herself and we sit  
6 there and we talk to each other and we talk to each other and those  
7 people and stuff in my head." (AR 42). She further stated that  
8 she does not "like to be around a lot of people. They put - Susan  
9 tells me to - she just wants me all to herself and she doesn't want  
10 me to be around a lot of people." (Id.).

11  
12 Plaintiff testified about her daily living, stating that she  
13 could not do household chores. (AR 38). She testified that her  
14 mother and daughters help her to get dressed and take care of her  
15 personal hygiene needs. (AR 37-38). She testified that she goes  
16 to the grocery store once a month with her family. However, she  
17 does not walk around the store but, rather, sits in a "wheelie  
18 cart." (AR 39). She further testified that she watches TV "all  
19 day" and likes to lay down. (AR 39).

20  
21 **C. Treating Physicians**

22 **1. Niraj Gupta, M.D.**

23  
24 Plaintiff had a mental health appointment with her treating  
25 physician, Dr. Niraj Gupta, on September 17, 2014. (AR 891-898).  
26 During this appointment, Dr. Gupta diagnosed Plaintiff with  
27 "Schizophrenia, Paranoid Type" and "Mental Retardation, Severity  
28

1 Unspecified." (AR 896). Dr. Gupta completed a "Narrative Report"  
2 based on this appointment, noting that Plaintiff suffered from  
3 auditory and visual hallucinations, that delusions and paranoid  
4 thoughts influenced her actions or behavior, that she had a severe  
5 memory deficit and a moderate judgment deficit, that she was not  
6 able to complete a forty-hour work week without decompensating,  
7 and that her diagnosis was "chronic." (AR 895). Dr. Gupta also  
8 noted, however, that Plaintiff was able to manage her own funds in  
9 her best interest. (AR 895). At this appointment, Dr. Gupta  
10 provided a Global Assessment of Functioning ("GAF") score of 50  
11 for Plaintiff, indicating that her mental impairment symptoms fell  
12 within the "serious" range of severity. (AR 896).

13  
14 **2. Marianne Tahl, M.D.**

15  
16 On October 10, 2011, Plaintiff's treating Physician, Dr.  
17 Marianne Tahl, wrote a letter on Plaintiff's behalf stating that  
18 Plaintiff was currently under her care and "may not return to work  
19 at this time." (AR 482). On March 15, 2013, Plaintiff called Dr.  
20 Tahl's office "requesting a letter stating she needs to be off work  
21 from January 2013 [until] . . . further notice." (AR 576). On  
22 March 29, 2013, Dr. Tahl wrote a letter on Plaintiff's behalf  
23 stating that she "may not return to work indefinitely as of  
24 1/13/2013, due to a medical condition." (AR 862). On April 11,  
25 2014, Dr. Tahl wrote a third letter stating that Plaintiff "may  
26 not return to work indefinitely as of 04/11/2014, due to a medical  
27 condition." (AR 861).

1 **D. Consultative Examinations**

2  
3 Plaintiff underwent two consultative psychological  
4 examinations, one in May 2013 and the other in July 2014. (AR 507-  
5 510, 875-879).

6  
7 **1. Paul Martin, Ph.D.**

8  
9 On May 17, 2013, Dr. Paul Martin, a licensed psychologist,  
10 conducted a psychological evaluation of Plaintiff. (AR 507-510).  
11 Plaintiff was 45 years old on the date of the evaluation. (AR  
12 507).

13  
14 Dr. Martin found that Plaintiff was "very unhelpful on  
15 interview, and appeared to be exaggerating the severity of her  
16 deficits. Very little useful information could be obtained on  
17 interview. She reported previously using mental health services,  
18 but could not provide details or describe her symptoms." (AR 507).  
19 He further stated that Plaintiff "presented in a manner that raised  
20 concerns about her genuine effort versus exaggeration of symptoms."  
21 (Id.).

22  
23 Under the report topic entitled "Substance Abuse," Dr. Martin  
24 wrote: "Denied. However, her behavior on exam certainly raises  
25 concerns regarding this area." (AR 508). Under the report topic  
26 entitled "Forensic," Dr. Martin wrote: "She acknowledged some  
27 involvement with the legal system, including serving a prison term,  
28 but she would not elaborate on the details." (AR 508).

1 Dr. Martin noted deficits in attention, memory, fund of  
2 knowledge, calculations, abstractions, thought process, insight,  
3 and judgment. (AR 508). Dr. Martin administered the Weschler Adult  
4 Intelligence Scale (WAIS) IV, on which Plaintiff obtained a full  
5 scale IQ score of 40, indicating that her intellectual functioning  
6 was in the impaired range. (AR 509). However, Dr. Martin stated  
7 that the score was invalid because Plaintiff was "unable/unwilling  
8 to perform the simplest tasks." (Id.). Dr. Martin similarly  
9 administered the Weschler Memory Scale (WMS) IV, with Plaintiff's  
10 results indicating that her ability to learn and recall new  
11 information was in the impaired range. (Id.). Dr. Martin also  
12 considered these results invalid, noting that Plaintiff was  
13 malingering and that she had a GAF score of 70<sup>1</sup> (id.), indicating  
14 mild symptoms or difficulty functioning. In his assessment, Dr.  
15 Martin stated that "[d]ue to the unreliability of the claimant's  
16 self-reported history and level of functioning, it is presumed that  
17 her actual level of functioning is better than her self-reported  
18 level of functioning." (Id.).

19  
20 Under the report topic entitled "General Observations," Dr.  
21 Martin stated that Plaintiff's "expressive and receptive language  
22 skills were adequate" and that her "gross motor function was  
23

24 \_\_\_\_\_  
25 1 A GAF score of 61-70 indicates some mild symptoms (e.g.,  
26 depressed mood and mild insomnia) or some difficulty in social,  
27 occupational, or school functioning (e.g., occasional truancy, or  
28 theft within the household), but generally functioning pretty well,  
has some meaningful relationships (American Psychiatric  
Association, *Diagnostic and Statistical Manual of Mental Disorders*,  
Fourth Edition, Text Revision (DSM-IV-TR), 34 (2000)).

1 normal" and that she was "able to ambulate without assistance."  
2 (AR 508).

3  
4 **2. Kathy Vandenburg, Ph.D.**

5  
6 On July 2, 2014, Dr. Kathy Vandenburg, a psychologist,  
7 conducted a psychological evaluation of Plaintiff. (AR 875-883).  
8 Plaintiff was 46 years old on the date of the evaluation. (AR  
9 876).

10  
11 Under the report topic entitled "Habits," Dr. Vandenburg  
12 wrote: "The [plaintiff] denies a history of drug or alcohol abuse."  
13 (AR 877). Under the report topic entitled "Legal," Dr. Vandenburg  
14 wrote: "The [Plaintiff] reports a history of incarceration in  
15 prison for two years in 2003 due to trying to hurt somebody else.  
16 She reported, 'Susan hit someone with a screwdriver.' She denies  
17 ever being in trouble with the law since that time." (Id.).

18  
19 Dr. Vandenburg noted deficits in memory, attention,  
20 concentration, and fund of knowledge. (AR 877-878). Dr.  
21 Vandenburg was unable to complete the WAIS-IV and WMS-IV because  
22 Plaintiff could not answer any questions correctly or remember any  
23 of the information. (AR 878). Dr. Vandenburg noted that  
24 Plaintiff's "presentation was consistent with an individual who  
25 was feigning psychosis. She pretended to have an imaginary  
26 [friend] named Susan ... Her presentation clearly was not genuine."  
27 (AR 876). Dr. Vandenburg further noted that Plaintiff could not  
28 answer simple questions that even those who have mild mental

1 retardation and psychosis are able to answer. (Id.). Dr.  
2 Vandenburg stated that Plaintiff was "likely capable of handling  
3 funds" and that she "was clearly malingering." (AR 879).

4  
5 Under the report topic entitled "Speech," Dr. Vandenburg  
6 stated that Plaintiff's speech was normal, however she "was acting  
7 in a childlike manner, and her speech reflected this. The evaluator  
8 was able to understand 100% of the [plaintiff's] verbal  
9 productions. Tone was adequately modulated. Verbal response time  
10 was adequate." (AR 877).

#### 11 12 **E. Adult Function Report**

13  
14 On March 22, 2013, Plaintiff completed an Adult Function  
15 Report. (AR 366-374). Plaintiff alleged that she had difficulty  
16 understanding, completing tasks, concentrating, and following  
17 instructions, among other things. (AR 371). She further alleged  
18 that she could not pay bills, count change, or handle a savings  
19 account. (AR 369).

#### 20 21 **F. Vocational Expert's Testimony**

22  
23 Dr. Luis Mas, a vocational expert ("VE") testified at the  
24 October 23, 2014 hearing. (AR 49-54). The ALJ asked Dr. Mas to  
25 consider a series of factors in creating a hypothetical for  
26 determining Plaintiff's ability to work. (AR 50-52). The ALJ's  
27 hypothetical included a person with certain postural and  
28 environmental limitations. (AR 52). Dr. Mas testified that he

1 could identify work in the national economy that would be  
2 consistent with these limitations, including ticket taker, small  
3 parts assembler, sales attendant, and inspector/hand packager. (AR  
4 52-53).

5  
6 **IV.**

7 **THE FIVE STEP SEQUENTIAL EVALUATION PROCESS**

8  
9 To qualify for disability benefits, a claimant must  
10 demonstrate a medically determinable physical or mental impairment  
11 that prevents him from engaging in substantial gainful activity<sup>2</sup>  
12 and that is expected to result in death or to last for a continuous  
13 period of at least twelve months. Reddick v. Chater, 157 F.3d 715,  
14 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The  
15 impairment must render the claimant incapable of performing the  
16 work he previously performed and incapable of performing any other  
17 substantial gainful employment that exists in the national economy.  
18 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42  
19 U.S.C. § 423(d)(2)(A)).

20  
21 To decide if a claimant is entitled to benefits, an ALJ  
22 conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The  
23 steps are:

24  
25  
26  
27 <sup>2</sup> Substantial gainful activity means work that involves doing  
28 significant and productive physical or mental duties and is done  
for pay or profit. 20 C.F.R. §§ 404.1520, 416.910.

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- (1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.
  
- (2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.
  
- (3) Does the claimant's impairment meet or equal one on the list of specific impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is found disabled. If not, proceed to step four.
  
- (4) Is the claimant capable of performing his past work? If so, the claimant is found not disabled. If not, proceed to step five.
  
- (5) Is the claimant able to do any other work? If not, the claimant is found disabled. If so, the claimant is found not disabled.

Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett); 20 C.F.R. §§ 404.1520(b)-404.1520(f)(1) & 416.920(b)-416.920(f)(1).



1 At step one, the ALJ observed that Plaintiff had not engaged  
2 in substantial gainful activity since July 23, 2012, the date on  
3 which she filed an application for SSI. (AR 13).

4  
5 At step two, the ALJ found that Plaintiff's severe impairments  
6 were obesity, lumbago, hypertension, chronic kidney disease, and  
7 sleep apnea. (Id.). The ALJ found, however, that Plaintiff's  
8 medically determinable mental impairment of psychosis was  
9 nonsevere. (Id.)

10  
11 At step three, the ALJ concluded that Plaintiff did not have  
12 an impairment or combination of impairments that meets or medically  
13 equals the severity of one of the listed impairments in 20 CFR Part  
14 404, Subpart P, Appendix 1. (AR 15). At step four, the ALJ found  
15 that Plaintiff was "unable to perform any past relevant work." (AR  
16 20).

17  
18 Finally, at step five, the ALJ concluded that Plaintiff had  
19 the residual functioning capacity ("RFC") to "lift and/or carry 20  
20 pounds occasionally and 10 pounds frequently; she can stand and/or  
21 walk for 6 hours in an 8-hour workday; she can sit for 6 hours in  
22 an 8-hour workday; she can push and pull within the weight limits;  
23 she cannot climb ladders, ropes, or scaffolds; she can frequently  
24 kneel, stoop, balance, crawl, and crouch; she can frequently  
25 handle, finger, and feel with the bilateral upper extremity; she  
26 should avoid even moderate exposure to fumes, odors, dust, gases,  
27  
28

1 or poor ventilation; and she should avoid even moderate exposure  
2 to hazards, such as machinery and heights." (AR 16).

3  
4 The ALJ elaborated that, based on the testimony of the VE and  
5 considering Plaintiff's age, education, work experience, and RFC,  
6 Plaintiff is capable of making a successful adjustment to other  
7 work that exists in significant numbers in the national economy  
8 and, in sum, a finding of "not disabled" was appropriate. (AR 21).

9  
10 **VI.**

11 **STANDARD OF REVIEW**

12  
13 Under 42 U.S.C. § 405(g), a district court may review the  
14 Commissioner's decision to deny benefits. "The court may set aside  
15 the Commissioner's decision when the ALJ's findings are based on  
16 legal error or are not supported by substantial evidence in the  
17 record as a whole." Auckland v. Massanari, 257 F.3d 1033, 1035  
18 (9th Cir. 2001) (citing Tackett, 180 F. 3d at 1097); Smolen v.  
19 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen,  
20 885 F.2d 597, 601 (9th Cir. 1989)).

21  
22 "Substantial evidence is more than a scintilla, but less than  
23 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.  
24 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
25 evidence which a reasonable person might accept as adequate to  
26 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;  
27 Smolen, 80 F.3d at 1279). To determine whether substantial  
28 evidence supports a finding, the court must "consider the record

1 as a whole, weighing both evidence that supports and evidence that  
2 detracts from the [Commissioner's] conclusion.'" Auckland, 257  
3 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.  
4 1993)). If the evidence can reasonably support either affirming  
5 or reversing that conclusion, the court may not substitute its  
6 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-  
7 21 (citing Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453,  
8 1457 (9th Cir. 1995)).

9  
10 **VII.**

11 **DISCUSSION**

12  
13 Plaintiff contends that the ALJ's decision should be reversed  
14 and remanded for further administrative proceedings or that  
15 immediate payment of benefits should be ordered. (Mtn. at 8). The  
16 Court disagrees. The ALJ's decision must be affirmed.

17  
18 **A. The ALJ's Findings Regarding Plaintiff's Alleged Mental**  
19 **Impairment Do Not Require Remand**

20  
21 Plaintiff complains that the ALJ erred at step two of the  
22 sequential evaluation process in holding that she has no severe  
23 mental impairments. (Mtn. at 4). Specifically, Plaintiff argues  
24 that her "well-documented psychotic symptoms, consistently low GAF  
25 scores, and the numerous resulting limitations identified by  
26 treating physician Dr. Gupta establish that her chronic psychosis  
27 would impose more than a minimal effect on her ability to do basic  
28 work activities." (Id.). It is unclear that any error occurred.

1 However, to the extent that the ALJ erred in assessing Plaintiff's  
2 alleged mental impairment, any error was harmless. First, the ALJ  
3 analyzed the alleged impairment according to the Regulations.  
4 Second, the jobs identified by the VE are applicable to someone  
5 with low level mental functioning. Thus, even if the ALJ had found  
6 Plaintiff's alleged mental impairment to be severe, the outcome  
7 here would be the same.

8  
9 By its own terms, the evaluation at step two is a *de minimis*  
10 test intended to weed out the most minor of impairments. See Bowen  
11 v. Yuckert, 482 U.S. 137, 153-154 (1987); Edlund v. Massanari, 253  
12 F.3d 1152, 1158 (9th Cir.2005) (stating that the step two inquiry  
13 is a *de minimis* screening device to dispose of groundless claims)  
14 (quoting Smolen, 80 F.3d at 1290). An impairment is not severe  
15 only if the evidence establishes a slight abnormality that has only  
16 a minimal effect on an individual's ability to work. Smolen, 80  
17 F.3d at 1290 (internal quotations and citations omitted). Here,  
18 the ALJ applied more than a *de minimis* test when she determined  
19 that Plaintiff's alleged mental impairment is not severe. However,  
20 the error was harmless.

21 "A decision of the ALJ will not be reversed for errors that  
22 are harmless." Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir.  
23 2005). Moreover, in the Social Security context, the court "will  
24 not reverse for errors that are 'inconsequential to the ultimate  
25 nondisability determination.'" Molina v. Astrue, 674 F.3d 1104,  
26 1117 (9th Cir. 2012) (quoting Stout v. Comm'r, 454 F.3d 1050, 1055  
27 (9th Cir. 2006)). It is established that an ALJ's failure to find  
28

1 an impairment severe, even if erroneous, is harmless error where  
2 at the later RFC stage of the analysis, the ALJ discusses the  
3 impairment, the medical findings, the pertinent symptoms, and the  
4 applicable opinions concerning functional limitations. Lewis v.  
5 Astrue, 498 F.3d 909, 911 (9th Cir. 2007). At step two, the ALJ  
6 found that Plaintiff had no limitations in the four broad  
7 functional areas (the "paragraph B" criteria) set out in the  
8 disability Regulations for evaluating mental disorders and in  
9 section 12.00C of the Listing of Impairments. (AR 13).  
10 Specifically, she found that Plaintiff had no limitations in  
11 activities of daily living, social functioning, concentration,  
12 persistence or pace, and no episodes of decompensation. (Id.).

13  
14 Under the Regulations, after rating the degree of loss at step  
15 two, the ALJ must determine whether the plaintiff has a severe  
16 impairment. 20 C.F.R. § 416.920a(d). Once the ALJ has determined  
17 that a mental impairment is severe, the ALJ must then determine if  
18 it meets or equals a listing in 20 C.F.R. Part 404, Subpart P,  
19 Appendix I. 20 C.F.R. § 416.920a(d)(2). Finally, if a listing is  
20 not met, the ALJ must then assess the plaintiff's RFC, and the  
21 ALJ's decision "must incorporate the pertinent findings and  
22 conclusions" regarding the plaintiff's mental impairment,  
23 including "a specific finding as to the degree of limitation in  
24 each of the functional areas described." 20 C.F.R. §  
25 416.920a(d)(3), (e)(2).

1 Here, the ALJ explained that the RFC assessment “used at steps  
2 4 and 5 of the sequential evaluation process requires a more  
3 detailed assessment by itemizing various functions contained in  
4 broad categories found in paragraph B.” (AR 14). The ALJ continued  
5 that, therefore, Plaintiff’s RFC assessment “reflects the degree  
6 of limitation” found in the paragraph B mental function analysis  
7 (id.) and subsequently provided a thorough overview of Plaintiff’s  
8 longitudinal mental health treatment records.

9  
10 First, it is not clear that the ALJ erred when finding that  
11 Plaintiff’s mental impairment was “not severe.” The ALJ noted that  
12 one of the consultative examining physicians, Dr. Martin, assessed  
13 a GAF score of 70, indicating mild symptoms or difficulty  
14 functioning. (Id.). The ALJ also considered Dr. Gupta’s opinion  
15 that Plaintiff could not complete a 40-hour work week without  
16 decompensating, but found it less persuasive because it contrasted  
17 sharply with the other evidence of record. (AR 15). The ALJ  
18 similarly considered the findings of both consultative examiners,  
19 who concluded that Plaintiff had “no mental limitations” despite  
20 mental status examinations revealing deficits with attention,  
21 memory, fund of knowledge, calculations, abstractions, thought  
22 processes, insight, judgment, and attention. (AR 14, 15). The  
23 ALJ also considered the fact that, in 2013, Plaintiff sought  
24 monetary assistance when she was unable to pay her rent. (AR 17,  
25 689-690, 694). Medical records indicate that hospital staff  
26 instructed Plaintiff to have her landlord complete HHOPE rental  
27 assistance documents. (AR 694). Plaintiff responded that she  
28 “understood” and attempted to contact her landlord in an effort to

1 have these documents completed. (Id.). The ALJ determined that  
2 these facts were inconsistent with Plaintiff's Adult Function  
3 Report, wherein she claimed to have difficulty understanding,  
4 completing tasks, concentrating, following instructions (AR 17,  
5 371), and claimed that she could not pay bills, handle a savings  
6 account, remember to take medications, or follow spoken  
7 instructions. (AR 17, 369). Thus, the ALJ fully considered  
8 Plaintiff's medical symptoms and the applicable opinions and  
9 evidence when determining Plaintiff's RFC and it is not clear that  
10 the ALJ erred by finding Plaintiff's mental impairment to be non-  
11 severe.

12  
13 Moreover, while the ALJ did not incorporate Plaintiff's  
14 alleged mental impairment into the hypothetical that she posed to  
15 the VE, the jobs identified by the VE are capable of performance  
16 by someone with low level mental functioning. Thus, even had the  
17 ALJ fully credited Plaintiff's evidence, found a severe mental  
18 impairment, and incorporated the impairment into the hypothetical,  
19 the result would be the same. Specifically, the VE identified  
20 "[t]icket taker, DOT 344.667-010" and "[s]mall parts assembler",  
21 associated with DOT 739.687-030. (AR 21). Both of these jobs  
22 require a reasoning level of 2, meaning they require an ability to  
23 "apply commonsense understanding to carry out detailed but  
24 uninvolved written or oral instructions ... [d]eal with problems  
25 involving a few concrete variables in or from standardized  
26 situations." APPENDIX C - COMPONENTS OF THE DEFINITION TRAILER,  
27 1991 WL 688702. If the ALJ had found Plaintiff's mental impairment  
28 to be severe, these jobs would still be appropriate, particularly

1 in light of the ALJ's finding that Plaintiff could understand and  
2 follow instructions for the completion of rental assistance  
3 documents. (AR 17, 694). Thus, any error was harmless and remand  
4 is not required.

5  
6 **B. The ALJ Properly Considered The Treating Physicians' Opinions**

7  
8 Plaintiff complains that the ALJ failed to properly consider  
9 Dr. Gupta's medical opinion (Mtn. at 4) as well as Dr. Tahl's  
10 letters. (Mtn. at 6). Plaintiff contends that the ALJ "failed to  
11 provide any specific and legitimate reasons" for rejecting these  
12 opinions. (Mtn. at 6, 8). Plaintiff asserts that both opinions  
13 must be accepted as a matter of law, resulting in a finding of  
14 disability, or in the alternative, remand. (Mtn. at 6, 8). The  
15 Court disagrees.

16  
17 Although a treating physician's opinion is entitled to great  
18 deference, it is not necessarily conclusive as to either a physical  
19 condition or the ultimate issue of disability. Magallanes v.  
20 Bowen, 881 F.2d 747, 751 (9th Cir.1989). The ALJ may reject the  
21 opinion of a treating physician in favor of another conflicting  
22 medical opinion, if the ALJ makes findings setting forth specific,  
23 legitimate reasons for doing so that are based on substantial  
24 evidence in the record. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir.  
25 2007). Moreover, the ALJ "may discredit treating physicians'  
26 opinions that are conclusory, brief, and unsupported by the record  
27 as a whole." Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190,  
28 1195 (9th Cir. 2004).

1                   **1. The ALJ Properly Considered Dr. Gupta's Opinion**

2  
3                   The ALJ's decision contains a thorough summary of the medical  
4 evidence in the record. (AR 13-20). The ALJ considered Dr. Gupta's  
5 opinion that Plaintiff could not complete a 40-hour work week  
6 without decompensating. (AR 14). The ALJ afforded greater weight,  
7 however, to the opinions of the two psychological consultative  
8 examiners who opined that Plaintiff has no mental limitations  
9 although mental status examinations showed deficits with memory,  
10 concentration, and fund of knowledge. (AR 15). The ALJ  
11 appropriately set forth specific and legitimate reasons, based on  
12 substantial evidence in the record, for affording greater weight  
13 to these opinions.

14  
15                   The ALJ noted that, while Plaintiff complained of problems  
16 with memory, concentration, and mood swings and participated in  
17 group therapy for auditory hallucinations, she was not taking any  
18 psychotropic medications to control her mental symptoms. (AR 14).  
19 Parra, 481 F.3d at 751 (finding evidence of "conservative  
20 treatment" as "sufficient to discount a claimant's testimony  
21 regarding severity of an impairment.")

22  
23                   The ALJ also weighed the fact that both psychological  
24 consultative reports found Plaintiff to be malingering. (AR 15).  
25 Further, the ALJ examined the reasons underlying Dr. Vandenburg's  
26 opinion that Plaintiff was malingering, including that she could  
27 not answer simple questions that even those who have mild mental  
28 retardation and psychosis are able to answer, was unable to point

1 to body parts, could not correctly identify colors, was unable to  
2 count correctly from 1 to 10, and pretended to have an imaginary  
3 friend. (AR 15).

4  
5 The ALJ similarly considered the fact that Plaintiff's alleged  
6 functional limitations were contradicted by medical records  
7 demonstrating that she was able to follow hospital instructions to  
8 have paperwork completed by her landlord in order to receive  
9 financial assistance for rent. (AR 17).

10  
11 Thus, the ALJ carefully examined the record as a whole and  
12 articulated specific and legitimate reasons for finding that Dr.  
13 Gupta's opinion undermined by other evidence and was therefore less  
14 persuasive.

15  
16 **2. The ALJ Properly Considered Dr. Tahl's Letters**

17  
18 As with Dr. Gupta's opinion, the ALJ gave specific and  
19 legitimate reasons for affording little weight to Dr. Tahl's  
20 letters. Among other things, the ALJ cited to diagnostic studies  
21 which did not show more than mild-to-moderate findings associated  
22 with the chest/heart and abdomen, a lumbar spine X-ray that was  
23 unremarkable, and the fact that Plaintiff's chest, back, and  
24 abdominal pain were treated conservatively. (AR 17). The ALJ  
25 described the opinion of Dr. Mario Luna, M.D., Board eligible in  
26 orthopedic surgery, noting that it was consistent with objective  
27 findings. (AR 19). The ALJ also considered evidence in the record  
28 that, despite allegations of symptoms and limitations preventing

1 all work, Plaintiff planned to travel across the country for the  
2 holidays. (AR 17).

3  
4 The ALJ properly considered Dr. Tahl's letters by providing a  
5 detailed summary of evidence contradicting these letters and by  
6 pointing to evidence that demonstrated Plaintiff had not been  
7 deprived of the ability to work. Thus, the ALJ appropriately  
8 discredited Dr. Tahl's conclusory statements, which were  
9 unsupported by the record as a whole. See Batson 359 F.3d at 1195.

10  
11 **VIII.**

12 **CONCLUSION**

13  
14 Consistent with the foregoing, IT IS ORDERED that Judgment be  
15 entered AFFIRMING the decision of the Commissioner. The Clerk of  
16 the Court shall serve copies of this Order and the Judgment on  
17 counsel for both parties.

18  
19 DATED: May 16, 2017

20 \_\_\_\_\_ /s/  
21 SUZANNE H. SEGAL  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27  
28