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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

T.R.,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

Case No. 5:16-cv-02676-SHK

OPINION AND ORDER

Plaintiff T.R.<sup>1</sup> (“Plaintiff”) seeks judicial review of the final decision of the Commissioner of the Social Security Administration (“Commissioner” or the “Agency”) denying his application for disability insurance benefits (“DIB”) and supplemental security income (“SSI”), under Titles II and XVI of the Social Security Act (the “Act”). This Court has jurisdiction, under 42 U.S.C. §§ 405(g) and 1383(c)(3), and, pursuant to 28 U.S.C. § 636(c), the parties have consented to the jurisdiction of the undersigned United States Magistrate Judge. For the

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<sup>1</sup> The Court substitutes Plaintiff’s initials for Plaintiff’s name to protect Plaintiff’s privacy with respect to Plaintiff’s medical records discussed in this Opinion and Order.

1 reasons discussed below, the Commissioner’s decision is REVERSED and this  
2 action is REMANDED for further proceedings consistent with this Order.

### 3 I. BACKGROUND

4 On July 10, 2010, an Administrative Law Judge (“ALJ”) found that Plaintiff  
5 was not disabled based on prior DIB and SSI applications protectively filed on April  
6 17, 2008. Transcript (“Tr.”) 725.<sup>2</sup> Thereafter, Plaintiff filed the instant DIB and  
7 SSI applications on June 20, 2011, alleging disability beginning on September 26,  
8 2007. Tr. 188-202. Following a denial of benefits, Plaintiff requested a hearing  
9 before an ALJ, and, on April 5, 2013, ALJ Marti Kirby determined that Plaintiff was  
10 not disabled. Tr. 24-36. Plaintiff sought review of the ALJ’s decision with the  
11 Appeals Council (“AC”); however, review was denied on May 28, 2014. Tr. 1-7.  
12 Plaintiff sought district court review of the Commissioner’s unfavorable decision  
13 and, on August 17, 2015, the district court reversed the Commissioner’s decision  
14 and remanded the case for further proceedings. Tr. 807-19.

15 On August 15, 2016, ALJ Kirby again determined that Plaintiff was not  
16 disabled. Tr. 722-45. Plaintiff sought review of the ALJ’s decision with the AC;  
17 however, review was denied on October 28, 2016.<sup>3</sup> Tr. 710-21. This appeal  
18 followed.

### 19 II. STANDARD OF REVIEW

20 The reviewing court shall affirm the Commissioner’s decision if the decision  
21 is based on correct legal standards and the legal findings are supported by  
22 substantial evidence in the record. 42 U.S.C. § 405(g); Batson v. Comm’r Soc.  
23 Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004). Substantial evidence is “more  
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25 <sup>2</sup> A certified copy of the Administrative Record was filed on June 19, 2017. Electronic Case  
26 Filing Number (“ECF No.”) 21. Citations will be made to the Administrative Record or  
27 Transcript page number rather than the ECF page number.

28 <sup>3</sup> Though the AC declined to “assume jurisdiction in this matter” and concluded that “[t]he  
[ALJ]’s decision is the final decision of the Commissioner, the AC provided five paragraphs of  
analysis, complete with substantive findings and citations to the record. Tr. 710-11.

1 than a mere scintilla. It means such relevant evidence as a reasonable mind might  
2 accept as adequate to support a conclusion.” Richardson v. Perales, 402 U.S. 389,  
3 401 (1971) (citation and internal quotation marks omitted). In reviewing the  
4 Commissioner’s alleged errors, this Court must weigh “both the evidence that  
5 supports and detracts from the [Commissioner’s] conclusions.” Martinez v.  
6 Heckler, 807 F.2d 771, 772 (9th Cir. 1986).

7 ““When evidence reasonably supports either confirming or reversing the  
8 ALJ’s decision, [the Court] may not substitute [its] judgment for that of the ALJ.’”  
9 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting Batson, 359 F.3d at  
10 1196)); see also Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (“If the  
11 ALJ’s credibility finding is supported by substantial evidence in the record, [the  
12 Court] may not engage in second-guessing.” (citation omitted)). A reviewing  
13 court, however, “cannot affirm the decision of an agency on a ground that the  
14 agency did not invoke in making its decision.” Stout v. Comm’r Soc. Sec. Admin.,  
15 454 F.3d 1050, 1054 (9th Cir. 2006) (citation omitted). Finally, a court may not  
16 reverse an ALJ’s decision if the error is harmless. Burch v. Barnhart, 400 F.3d 676,  
17 679 (9th Cir. 2005) (citation omitted). “[T]he burden of showing that an error is  
18 harmful normally falls upon the party attacking the agency’s determination.”  
19 Shinseki v. Sanders, 556 U.S. 396, 409 (2009).

### 20 III. DISCUSSION

#### 21 A. Establishing Disability Under The Act

22 To establish whether a claimant is disabled under the Act, it must be shown  
23 that:

24 (a) the claimant suffers from a medically determinable physical or  
25 mental impairment that can be expected to result in death or that has  
26 lasted or can be expected to last for a continuous period of not less than  
27 twelve months; and  
28

1 (b) the impairment renders the claimant incapable of performing the  
2 work that the claimant previously performed and incapable of  
3 performing any other substantial gainful employment that exists in the  
4 national economy.

5 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
6 § 423(d)(2)(A)). “If a claimant meets both requirements, he or she is ‘disabled.’”  
7 Id.

8 The ALJ employs a five-step sequential evaluation process to determine  
9 whether a claimant is disabled within the meaning of the Act. Bowen v. Yuckert,  
10 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1520(a), 416.920(a). Each step is  
11 potentially dispositive and “if a claimant is found to be ‘disabled’ or ‘not-disabled’  
12 at any step in the sequence, there is no need to consider subsequent steps.”

13 Tackett, 180 F.3d at 1098; 20 C.F.R. §§ 404.1520, 416.920. The claimant carries  
14 the burden of proof at steps one through four, and the Commissioner carries the  
15 burden of proof at step five. Tackett, 180 F.3d at 1098.

16 The five steps are:

17 Step 1. Is the claimant presently working in a substantially gainful  
18 activity [(“SGA”)]? If so, then the claimant is “not disabled” within  
19 the meaning of the [ ] Act and is not entitled to [DIB or SSI]. If the  
20 claimant is not working in a [SGA], then the claimant’s case cannot be  
21 resolved at step one and the evaluation proceeds to step two. See 20  
22 C.F.R. § 404.1520(b).[<sup>4</sup>]

23 Step 2. Is the claimant’s impairment severe? If not, then the  
24 claimant is “not disabled” and is not entitled to [DIB or SSI]. If the  
25 claimant’s impairment is severe, then the claimant’s case cannot be  
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27 \_\_\_\_\_  
28 <sup>4</sup> The Court has also considered the parallel regulations set forth in 20 C.F.R. § 416.920 et seq.,  
when analyzing the ALJ’s denial of Plaintiff’s SSI application.

1 resolved at step two and the evaluation proceeds to step three. See 20  
2 C.F.R. § 404.1520(c).

3 Step 3. Does the impairment “meet or equal” one of a list of  
4 specific impairments described in the regulations? If so, the claimant is  
5 “disabled” and therefore entitled to [DIB or SSI]. If the claimant’s  
6 impairment neither meets nor equals one of the impairments listed in  
7 the regulations, then the claimant’s case cannot be resolved at step  
8 three and the evaluation proceeds to step four. See 20 C.F.R.  
9 § 404.1520(d).

10 Step 4. Is the claimant able to do any work that he or she has  
11 done in the past? If so, then the claimant is “not disabled” and is not  
12 entitled to [DIB or SSI]. If the claimant cannot do any work he or she  
13 did in the past, then the claimant’s case cannot be resolved at step four  
14 and the evaluation proceeds to the fifth and final step. See 20 C.F.R.  
15 § 404.1520(e).

16 Step 5. Is the claimant able to do any other work? If not, then  
17 the claimant is “disabled” and therefore entitled to [DIB or SSI]. See  
18 20 C.F.R. § 404.1520(f)(1). If the claimant is able to do other work,  
19 then the Commissioner must establish that there are a significant  
20 number of jobs in the national economy that claimant can do. There are  
21 two ways for the Commissioner to meet the burden of showing that  
22 there is other work in “significant numbers” in the national economy  
23 that claimant can do: (1) by the testimony of a vocational expert  
24 [(“VE”)], or (2) by reference to the Medical-Vocational Guidelines at  
25 20 C.F.R. pt. 404, subpt. P, app. 2 [(“the Listings”)]. If the  
26 Commissioner meets this burden, the claimant is “not disabled” and  
27 therefore not entitled to [DIB or SSI]. See 20 C.F.R. §§ 404.1520(f),  
28

1 404.1562. If the Commissioner cannot meet this burden, then the  
2 claimant is “disabled” and therefore entitled to [DIB or SSI]. See id.  
3 Id. at 1098-99.

4 **B. Summary Of ALJ’s Findings**

5 Before making any findings in the above discussed five-step sequential  
6 evaluation process, the ALJ first determined that Plaintiff had rebutted the  
7 presumption of continuing nondisability that flowed from Plaintiff being found not  
8 disabled previously in 2010.<sup>5</sup> Tr. 726. The ALJ found that Plaintiff had submitted  
9 new evidence after the prior ALJ’s decision “that is material to the severity of  
10 [Plaintiff’s] mentally determinable impairments that was not previously  
11 considered, which resulted in a finding different from the finding made in the prior  
12 decision.”<sup>6</sup> Id. The ALJ, therefore, did not give *res judicata* effect to the findings  
13 of the prior ALJ when examining Plaintiff’s instant DIB and SSI applications in the  
14 five-step sequential evaluation process discussed below. Id.

15 The ALJ first determined that “[Plaintiff] meets the insured status  
16 requirements of the . . . Act through December 31, 2012.” Tr. 728. The ALJ then  
17 found, at step one, that “[Plaintiff] has not engaged in [SGA] since September 26,  
18 2007, the alleged onset date (20 C.F.R. 404.1571 et seq. and 416.971 et seq.).” Id.  
19 At step two, the ALJ found that “[Plaintiff] has the following severe impairments:  
20 degenerative disc disease of the lumbar spine, asthma, obesity, depressive disorder  
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22 <sup>5</sup> A binding determination of nondisability at the ALJ or AC level “creates a presumption that the  
23 claimant continued to be able to work after that date.” Lester v. Chater, 81 F.3d 821, 827-28 (9th  
24 Cir. 1996) (internal quotation marks omitted). Thus, “in order to overcome the presumption of  
25 continuing nondisability arising from the first [ALJ’s] findings on nondisability, [a claimant] must  
26 prove changed circumstances indicating a greater disability.” Chavez v. Bowen, 844 F.2d 691,  
27 693 (9th Cir. 1988) (internal quotation marks omitted). Changed circumstances can include  
28 “[a]n increase in the severity of the claimant’s impairment” or “a change in the claimant’s age  
category, as defined in the Medical-Vocational Guidelines [the (Grids)].” Lester, 81 F.3d at  
827.

<sup>6</sup> The ALJ’s *res judicata* analysis began in the middle of a sentence. Thus, the ALJ’s entire  
analysis does not appear to be before the Court.

1 with psychotic disorder, anxiety disorder with panic attacks and a history of  
2 polysubstance dependence including amphetamine use (20 CFR 404.1520(c) and  
3 416.920(c)).” Id. At step three, the ALJ found that “[Plaintiff] does not have an  
4 impairment or combination of impairments that meets or medically equals one of  
5 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR  
6 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).” Tr. 728-29.

7 In preparation for step four, the ALJ found that Plaintiff has the residual  
8 functional capacity (“RFC”) to:

9 perform light work as defined in 20 CFR 404.1567(b) and 416.967(b)  
10 except he is able to sit, stand and/or walk for six hours out of an eight-  
11 hour workday provided he is able to shift positions at will. He is able to  
12 perform postural maneuvers occasionally but cannot climb ladders,  
13 ropes or scaffolds. Further, he is to avoid working around hazards such  
14 as unprotected heights and moving machinery. He is to avoid  
15 concentrated exposure to fumes, odors, gases, smoke and other  
16 pulmonary irritants. He cannot work in any type of job that requires  
17 hypervigilance or intense concentration on a particular task meaning  
18 preclusion of jobs where the very nature of the work itself is such that  
19 the person could not be off task for even the smallest amount of time  
20 such as watching a surveillance monitor where safety might be an issue.  
21 Further, he is capable of only low stress work with no fast-paced  
22 production or assembly line type work. He is able to concentrate for up  
23 to two hours at a time but would be limited to unskilled tasks in a non-  
24 public work setting. Lastly, he is limited to occasional, non-intense,  
25 superficial contact with co-worker and supervisors as well as being  
26 limited to object oriented work requiring no teamwork.

27 Tr. 731. At step four, the ALJ found that “[Plaintiff] in unable to perform any past  
28 relevant work (20 CFR 404.1565 and 416.965).” Tr. 738.

1 In preparation for step five, the ALJ noted that “[Plaintiff] was born on  
2 December 26, 1975 and was 31 years old, which is defined as a younger individual  
3 age 18-49, on the alleged disability onset date (20 CFR 404.1563 and 4416.963).”  
4 Id. The ALJ also noted that “[Plaintiff] has a limited education and is able to  
5 communicate in English (20 CFR 404.1564 and 416.964).” Id. The ALJ added  
6 that “[t]ransferability of job skills is not material to the determination of disability  
7 because using the Medical-Vocational Rules as a framework supports a finding that  
8 [Plaintiff] is ‘not disabled,’ whether or not [Plaintiff] has transferable job skills (See  
9 SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).” Tr. 739.

10 At step five, the ALJ found that “[c]onsidering [Plaintiff’s] age, education,  
11 work experience, and [RFC], there are jobs that exist in significant numbers in the  
12 national economy that [Plaintiff] can perform (20 CFR 404.1569, 404.1569(a),  
13 416.969, and 416.969(a)).” Id. Specifically, the ALJ found that Plaintiff could  
14 perform the “light exertional, unskilled (SVP 2)” occupations of “marking clerk”  
15 as the occupation is defined in the Dictionary of Occupational Titles (“DOT”) at  
16 DOT 209.587-034, with 43,000 jobs nationally; “routing clerk, DOT code  
17 222.587-038,” with 46,000 jobs nationally; and “mail clerk, DOT code 209.587-  
18 026,” with 18,000 jobs nationally. Id. The ALJ based her decision that Plaintiff  
19 could perform the aforementioned occupations on the VE’s testimony from the  
20 administrative hearing that, the ALJ found, was “consistent with information  
21 contained in the [DOT].” Tr. 739.

22 After finding that “[Plaintiff] is capable of making a successful adjustment to  
23 other work that exists in significant numbers in the national economy” at step five,  
24 the ALJ concluded that “[a] finding of not disabled is . . . appropriate under the  
25 framework of the above-cited rule.” Id. (internal quotation marks omitted). The  
26 ALJ, therefore, found that “[Plaintiff] has not been under a disability, as defined in  
27 the . . . Act, from September 26, 2007, through [August 18, 2016], the date of th[e]  
28 decision (20 CFR 404.1520(g) and 416.920(g)).” Id.



1           **C.     Issues Presented**

2           In this appeal, Plaintiff raises three issues, including whether: (1) the ALJ  
3 erred by not providing specific and legitimate reasons for rejecting the opinions of  
4 Plaintiff’s treating psychiatrist, Dr. Mahfoozi, or psychological consultative  
5 examiner Dr. Michael;<sup>7</sup> (2) Plaintiff’s RFC limitation to superficial contact  
6 precludes Plaintiff from performing work in unskilled occupations; and (3)  
7 Plaintiff’s lack of a high school education prevents Plaintiff from performing the  
8 occupations identified by the ALJ at step five. ECF No. 32, Joint Stipulation at 5-6;  
9 Tr. 718-19.

10           **D.     Court’s Consideration Of Each Of Plaintiff’s Arguments**

11                 **1.     ALJ’s Consideration Of Plaintiff’s Treating Doctor’s**  
12                         **Opinion**

13           The ALJ assigned “little weight” to the opinions of Plaintiff’s treating  
14 psychiatrist, Dr. Mahfoozi, dated July 10, 2011, and May 4, 2016, for four reasons.  
15 First, the ALJ noted that Dr. Mahfoozi “determined that [Plaintiff] was markedly  
16 limited with social and cognitive functioning[,]” while “the overall trend” in  
17 Plaintiff’s treatment records “shows [Plaintiff] reporting a decrease in his  
18 symptoms and unremarkable mental health status examinations.” Tr. 736.

19           Second, the ALJ found that “Dr. Mahfoozi’s treatment notes showing  
20 repeatedly unremarkable mental health status examinations coupled with his  
21 ongoing treatment of monthly 15-minute sessions with no recommendation of more  
22 extensive therapy indicates that his opinions are based on [Plaintiff’s] subjective  
23 symptom complaints and not grounded in the clinical evidence.” Tr. 736-37.

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25 <sup>7</sup> Plaintiff’s challenge to the ALJ’s rejection of Drs. Mahfoozi’s and Michael’s opinions appeared  
26 in the Joint Stipulation in Plaintiff’s challenge to whether his RFC precludes him from  
27 performing work in unskilled occupations. See ECF No. 32, Joint Stipulation at 6. Plaintiff also  
28 briefed this issue at length in Plaintiff’s request for AC review, which, as discussed above, the AC  
made part of the record before “declin[ing] to assume jurisdiction in the matter” and declining  
review of the ALJ’s decision. Tr. 710-11, 718-19.

1 Third, the ALJ noted “with symptoms as severe as Dr. Mahfoozi has  
2 expressed it is remarkable that [Plaintiff] has not required frequent emergency care  
3 and hospitalization and has been able to remain capable of being the caregiver for  
4 his six children[,]” and “it is surprising that Dr. Mahfoozi would continue with just  
5 15 minute monthly sessions and would not have suggested more extensive  
6 behavioral therapy or more frequent psychiatric sessions.” Tr. 736.

7 Finally, the ALJ noted that “checklist opinions are weak evidence at best and  
8 rejection of a treating physician’s opinion is appropriate when the conclusions are  
9 in the form of a checklist and the treating notes do not provide objective medical  
10 evidence of the limitations asserted.” *Id.* (citations and internal quotation marks  
11 omitted).

## 12 2. Dr. Mahfoozi’s Treatment History And Opinions

### 13 a. Dr. Mahfoozi’s Treatment History

14 Aside from a window of time spanning from July 2012 to September 2015,  
15 when Plaintiff did not have insurance and sought treatment at the Riverside County  
16 Department of Mental Health, Dr. Mahfoozi provided Plaintiff with what the ALJ  
17 described as “fairly consistent mental health treatment” from December 2008 to  
18 May 2016.<sup>8</sup> Tr. 718, 730. During the time period that Dr. Mahfoozi treated  
19 Plaintiff, Dr. Mahfoozi assessed Global Assessment Functioning (“GAF”) scores<sup>9</sup>  
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22 <sup>8</sup> Dr. Mahfoozi noted in Plaintiff’s medical record, on December 16, 2008, that Plaintiff had  
23 previously seen Dr. Mahfoozi on February 14, 2006. Tr. 397-98. However, the Court can find  
no other evidence of this appointment in the record.

24 <sup>9</sup> “A GAF score is a rough estimate of an individual’s psychological, social, and occupational  
25 functioning used to reflect the individual’s need for treatment.” *Garrison v. Colvin*, 759 F.3d  
26 995, 1002 n.4 (9th Cir. 2014) (citation and internal quotation marks omitted). “According to the  
27 [*Diagnostic and Statistical Manual of Mental Disorders* (4th ed., rev. 2000) (“DSM-IV”)] “a  
28 GAF score between 41 and 50 describes ‘serious symptoms’ or ‘any serious impairment in social,  
occupational, or school functioning.’” *Id.* (quoting DSM-IV). “A GAF score between 51 to 60  
describes ‘moderate symptoms’ or [‘]any moderate difficulty in social, occupational, or school  
functioning.’” *Id.* (quoting DSM-IV). “Although GAF scores, standing alone, do not control  
determinations of whether a person’s mental impairments rise to the level of a disability (or

1 ranging from forty-two to fifty on fourteen different occasions. Specifically, Dr.  
2 Mahfoozi assessed Plaintiff as having GAF scores of 42,<sup>10</sup> 45,<sup>11</sup> 48,<sup>12</sup> and 50<sup>13</sup>  
3 throughout his longitudinal treatment of Plaintiff. Dr. Mahfoozi also noted and  
4 assessed multiple instances of auditory hallucinations,<sup>14</sup> visual hallucinations,<sup>15</sup>  
5 paranoid ideations or delusions,<sup>16</sup> worried mood,<sup>17</sup> sad mood,<sup>18</sup> apathetic mood,<sup>19</sup>  
6 depressed mood,<sup>20</sup> anxiety or anxious mood,<sup>21</sup> angry mood,<sup>22</sup> fearful mood,<sup>23</sup> major  
7 depression with psychotic features,<sup>24</sup> panic attacks,<sup>25</sup> loose association in thought  
8

9 \_\_\_\_\_  
10 interact with physical impairments to create a disability), they may be a useful measurement.”  
11 Id.

12 <sup>10</sup> See Tr. 635, 1026 (GAF score of 42 assessed).

13 <sup>11</sup> See Tr. 368, 373, 549, 554, 638, 643, 648 (GAF score of 45 assessed).

14 <sup>12</sup> See Tr. 378, 379, 396, 653 (GAF score of 48 assessed).

15 <sup>13</sup> See Tr. 391 (GAF score of 50 assessed).

16 <sup>14</sup> See Tr. 368, 369, 370, 373, 378, 379, 382, 383, 384, 385, 386, 387, 388, 389, 391, 402, 549, 553,  
17 635, 636, 638, 642, 643, 644, 645, 648, 653, 655, 1026, 1027 (auditory hallucinations assessed).

18 <sup>15</sup> See Tr. 387 (visual hallucinations assessed).

19 <sup>16</sup> See Tr. 368, 369, 370, 373, 374, 377, 378, 379, 382, 383, 384, 385, 386, 387, 388, 389, 391, 402,  
20 548, 549, 553, 635, 637, 638, 642, 643, 644, 645, 648, 652, 653, 1026 (paranoid ideations or  
21 delusions assessed).

22 <sup>17</sup> See Tr. 369, 375, 381, 382, 390, 394, 402, 553, 642, 644, 650, 655 (worried mood assessed).

23 <sup>18</sup> See Tr. 371, 646 (sad mood assessed).

24 <sup>19</sup> See Tr. 376, 552, 641, 645, 651 (apathetic mood assessed).

25 <sup>20</sup> See Tr. 369, 371, 375, 381, 387, 390, 393, 394, 395, 398, 402, 553, 636, 642, 644, 646, 648, 650,  
26 655, 924, 1027 (depressed mood assessed).

27 <sup>21</sup> See Tr. 381, 390, 391, 393, 394, 395, 398, 548, 635, 637, 655, 924, 1024 (anxiety or anxious  
28 mood assessed).

<sup>22</sup> See Tr. 389, 393, 398 (angry mood assessed).

<sup>23</sup> See Tr. 394, 553, 642 (fearful mood assessed).

<sup>24</sup> See Tr. 368, 369, 370, 373, 378, 379, 388, 389, 391, 396, 397, 402, 548, 549, 554, 635, 636, 637,  
638, 643, 644, 645, 646, 648, 653, 1026, 1027 (major depression with psychotic features  
assessed).

<sup>25</sup> See Tr. 368, 373, 378, 379, 380, 549, 638, 648, 654 (panic attacks assessed).

1 process,<sup>26</sup> thought “blocking[,]”<sup>27</sup> circumstantial thought processes,<sup>28</sup> flights of  
2 ideas,<sup>29</sup> “stuporous” alertness,<sup>30</sup> and dizziness<sup>31</sup> throughout the multiple years he  
3 treated Plaintiff. Dr. Mahfoozi also recommended, on five separate occasions, that  
4 Plaintiff’s psychiatric treatment sessions increase in duration from fifteen to thirty  
5 minutes per session.<sup>32</sup>

6 ***b. Dr. Mahfoozi’s 2011 Opinion***

7 On July 10, 2011, Dr. Mahfoozi completed a mental disorder questionnaire,  
8 whereby Dr. Mahfoozi noted that he has treated Plaintiff since December 8, 2009.  
9 Tr. 403. Dr. Mahfoozi stated that Plaintiff has a history of auditory hallucinations,  
10 paranoid ideations, and depression that have persisted since Plaintiff was twenty-  
11 nine, and that Plaintiff has a history of hospitalization for depression. *Id.* Dr.  
12 Mahfoozi added that Plaintiff “never got his high school diploma[,]” Plaintiff’s IQ  
13 is “below average[,]” Plaintiff has problems with memory, and Plaintiff forgets  
14 things easily. Tr. 404.

15 When questioned about Plaintiff’s affective status, Dr. Mahfoozi noted that  
16 Plaintiff complains of mood swings, depression, and auditory hallucinations. Tr.  
17 405. When questioned about Plaintiff’s reality contact, Dr. Mahfoozi opined that  
18 Plaintiff’s speech is “brief” and his “affect is flat.” *Id.* When questioned about  
19 Plaintiff’s daily activities and social functioning, Dr. Mahfoozi noted that Plaintiff  
20 “doesn’t do shopping [and] is socially isolated[,]” but that Plaintiff is able to use  
21 public transportation and can complete household tasks “very slow[ly].” Tr. 405-

22 \_\_\_\_\_  
23 <sup>26</sup> *See* Tr. 376, 651 (loose association assessed).

24 <sup>27</sup> *See* Tr. 376, 552, 553, 641, 651 (thought blocking assessed).

25 <sup>28</sup> *See* Tr. 387 (circumstantial thought process assessed).

26 <sup>29</sup> *See* Tr. 548, 637 (flights of ideas assessed).

27 <sup>30</sup> *See* Tr. 388, 548, 637 (stuporous alertness assessed).

28 <sup>31</sup> *See* Tr. 381, 655 (dizziness assessed).

<sup>32</sup> *See* Tr. 368, 399, 549, 554, 638 (increased duration psychiatric evaluations recommended).

1 06. Dr. Mahfoozi diagnosed Plaintiff with “major depression w[ith] psychotic  
2 features[,]” assigned a “guarded” prognosis of whether Plaintiff’s condition could  
3 be expected to improve, and opined that Plaintiff is “unable to work [and] adapt to  
4 stresses common to the work environment.” Tr. 406-07.

5 *c. Dr. Mahfoozi’s 2016 Opinion*

6 On May 5, 2016, Dr. Mahfoozi completed a medical source statement  
7 questionnaire, wherein he opined that Plaintiff would have “moderate” to  
8 “marked” limitations in his ability to perform certain work related activities as a  
9 result of his mental impairments. Tr. 926-28. Specifically, Dr. Mahfoozi opined  
10 that as a result of Plaintiff’s anxiety, panic disorder, and extreme anger,<sup>33</sup> Plaintiff  
11 would be “moderately” limited in his ability to understand, remember, and carry  
12 out short, simple instructions or detailed work, and that Plaintiff would be  
13 “markedly” limited in his ability to make judgments on simple and complex work-  
14 related decisions. Tr. 926.

15 Dr. Mahfoozi also opined that Plaintiff’s mental impairments would affect  
16 Plaintiff’s ability to “respond appropriately to supervision, co-workers, and work  
17 pressures in a work setting.” Tr. 927. Specifically, Dr. Mahfoozi opined that as a  
18 result of Plaintiff’s concentration impairment, mood disorder, agitation, and panic  
19 disorder, Plaintiff would have “marked” limitations in his ability to:

- 20 • maintain attendance and punctuality during a workday and workweek;
- 21 • perform at a consistent pace without more than regular breaks in a  
22 workday;
- 23 • interact appropriately with the public, supervisors, or co-workers;
- 24 • sustain an ordinary routine without special supervision; and
- 25 • respond appropriately to changes in a routine work setting.

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26 <sup>33</sup> The Court was unable to understand all of Dr. Mahfoozi’s handwritten notes. As best as the  
27 Court can tell, Dr. Mahfoozi also opined that Plaintiff’s “BP II, disorder” contributed to these  
28 moderate and marked limitations. Tr. 926. It is unclear, however, to what Plaintiff’s “BP II”  
disorder refers.

1 Id. Dr. Mahfoozi added that Plaintiff’s attention and focus, would be affected by  
2 Plaintiff’s severe mood disorder, panic attacks, and panic disorder, and that these  
3 impairments would cause forgetfulness and a “memory deficit.” Id. Dr. Mahfoozi  
4 also opined that Plaintiff could not manage benefits in his own best interest. Tr.  
5 928.

### 6                   3.     **Standard To Review ALJ’s Assessment of Dr. Mahfoozi’s** 7                                   **Opinion**

8           There are three types of medical opinions in Social Security cases: those  
9 from treating physicians, examining physicians, and non-examining physicians.  
10 Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d 685, 692 (9th Cir. 2009) (citation  
11 omitted). “The medical opinion of a claimant’s treating physician is given  
12 ‘controlling weight’ so long as it ‘is well-supported by medically acceptable clinical  
13 and laboratory diagnostic techniques and is not inconsistent with the other  
14 substantial evidence in [the claimant’s] case record.’” Trevizo v. Berryhill, 871  
15 F.3d 664, 675 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(c)(2)). “When a  
16 treating physician’s opinion is not controlling, it is weighted according to factors  
17 such as the length of the treatment relationship and the frequency of examination,  
18 the nature and extent of the treatment relationship, supportability, consistency  
19 with the record, and specialization of the physician.” Id. (citing 20 C.F.R.  
20 § 404.1527(c)(2)–(6)).

21           “‘To reject [the] uncontradicted opinion of a treating or examining doctor,  
22 an ALJ must state clear and convincing reasons that are supported by substantial  
23 evidence.’” Id. (quoting Ryan v. Comm’r Soc. Sec. Admin., 528 F.3d 1194, 1198  
24 (9th Cir. 2008)). “This is not an easy requirement to meet: ‘the clear and  
25 convincing standard is the most demanding required in Social Security cases.’”  
26 Garrison, 759 F.3d at 1015 (quoting Moore v. Comm’r Soc. Sec. Admin., 278 F.3d  
27 920, 924 (9th Cir. 2002)).

1           “‘If a treating or examining doctor’s opinion is contradicted by another  
2 doctor’s opinion, an ALJ may only reject it by providing specific and legitimate  
3 reasons that are supported by substantial evidence.’” Trevizo, 871 F.3d at 675  
4 (quoting Ryan, 528 F.3d at 1198). “This is so because, even when contradicted, a  
5 treating or examining physician’s opinion is still owed deference and will often be  
6 ‘entitled to the greatest weight . . . even if it does not meet the test for controlling  
7 weight.’” Garrison, 759 F.3d at 1012 (quoting Orn v. Astrue, 495 F.3d 625, 633  
8 (9th Cir. 2007)). “‘The ALJ can meet this burden by setting out a detailed and  
9 thorough summary of the facts and conflicting clinical evidence, stating his  
10 interpretation thereof, and making findings.’” Trevizo, 871 F.3d at 675 (quoting  
11 Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)).

#### 12           **4. ALJ’s Finding Not Supported By Substantial Evidence**

13           Here, as an initial matter, the Court notes that the ALJ did not find that Dr.  
14 Mahfoozi’s opinions were contradicted by another medical source’s opinion.  
15 Therefore, the ALJ’s reasons for rejecting Dr. Mahfoozi’s opinions must be clear  
16 and convincing and supported by substantial evidence. Trevizo, 871 F.3d at 675  
17 (citation omitted). The Court finds that the ALJ failed to meet this demanding  
18 standard here for the following reasons.

19           First, the ALJ’s rejection of Dr. Mahfoozi’s opinions because Plaintiff  
20 reported a decrease in symptoms, and because Dr. Mahfoozi’s treatment notes  
21 repeatedly revealed unremarkable examination findings, erroneously relies on only  
22 portions of plaintiff’s records, while ignoring evidence that supports the opposite  
23 conclusion. See Holohan v. Massanari, 246 F.3d 1195, 1207-08 (9th Cir. 2001) (an  
24 ALJ cannot selectively rely on some entries in plaintiff’s records while ignoring  
25 others). For example, as noted above, Dr. Mahfoozi assessed auditory and visual  
26 hallucinations; paranoid ideations or delusions; worried, sad, apathetic, depressed,  
27 angry, fearful, or anxious mood; major depression with psychotic features; panic  
28 attacks; dizziness; loose association and circumstantial thought processes; thought

1 blocking; stuporous alertness; and flights of ideas at least 177 times<sup>34</sup> throughout  
2 his longitudinal treatment history of Plaintiff.<sup>35</sup> These substantial findings by Dr.  
3 Mahfoozi, which the ALJ did not discuss when finding that Dr. Mahfoozi's  
4 opinions were unremarkable and due less weight, suggest that Plaintiff's symptoms  
5 had not waned over time, and, instead, were ongoing.

6 Similarly, Dr. Mahfoozi assessed GAF scores ranging from forty-two to fifty  
7 on fourteen different occasions throughout his longitudinal treatment of Plaintiff.<sup>36</sup>  
8 These GAF scores indicate "serious symptoms" and a "serious impairment" in  
9 social and occupational functioning, rather than unremarkable examination findings  
10 as the ALJ found. Garrison, 759 F.3d at 1002 n.4. The ALJ failed to discuss these  
11 GAF scores in her analysis of Dr. Mahfoozi's opinion. And while the ALJ later  
12 discussed and rejected some "GAF scores in the 45-50 range between December  
13 2008 and July 2012," as "not reliable when viewed with the totality of the  
14 evidence[,]'" including "[Plaintiff's] longitudinal mental health treatment records  
15 showing improvement with his depression, anxiety, auditory hallucinations and  
16 paranoia discussed above[,]'" because the ALJ did not provide any citations to the  
17 record to indicate which GAF scores she was assessing, it is unclear whether any of  
18 these rejected GAF scores were assessed by Dr. Mahfoozi. Tr. 738.

19 However, to the extent that the ALJ was discussing the GAF scores assessed  
20 by Dr. Mahfoozi, Dr. Mahfoozi's GAF score assessments still contradict the ALJ's  
21 conclusion that Dr. Mahfoozi's treatment notes revealed only unremarkable  
22 examination findings for two reasons. First, the ALJ's rejection of Plaintiff's GAF  
23 scores in the forty-five to fifty range, fails to consider Plaintiff's lowest GAF score

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25 <sup>34</sup> See the specific citations to the record listed above.

26 <sup>35</sup> The Court notes, again, that Dr. Mahfoozi's hand writing was difficult to read. Therefore, the  
27 Court only tallied the examination findings that it could affirmatively discern.

28 <sup>36</sup> See Tr. 635, 1026 (GAF score of 42 assessed); 368, 373, 549, 554, 638, 643, 648 (GAF score of  
45 assessed); Tr. 378, 379, 396, 653 (GAF score of 48 assessed); Tr. 391 (GAF score of 50  
assessed).



1 of forty-two that Dr. Mahfoozi assessed. Thus, the most severe GAF score  
2 assessed by Dr. Mahfoozi remains unassessed and undisturbed by the ALJ.  
3 Second, the ALJ's conclusion that the GAF scores are not supported by the record  
4 rests, again, on a conclusion that Plaintiff's symptoms improved, which, as  
5 discussed above, is a conclusion this Court rejects based on the evidence to the  
6 contrary that the ALJ did not appear to address. Specifically, the ALJ did not  
7 appear to consider over 100 assessments made by Dr. Mahfoozi throughout his  
8 longitudinal treatment of Plaintiff relating to Plaintiff's depression, anxiety,  
9 auditory hallucinations and paranoia.<sup>37</sup> This evidence that the ALJ overlooked or  
10 otherwise failed to discuss suggests that Plaintiff's depression, anxiety, auditory  
11 hallucinations and paranoia had continued, rather than waned as the ALJ found.

12 Accordingly, the Court finds that the ALJ's rejection of Dr. Mahfoozi's  
13 opinions because Plaintiff reported a decrease in symptoms, and because Dr.  
14 Mahfoozi's examination findings were unremarkable, are not supported by  
15 substantial evidence in the record and, thus, were neither clear and convincing, nor  
16 specific and legitimate reasons for rejecting Dr. Mahfoozi's opinions.

17 Second, the Court disagrees with the ALJ's conclusion that Dr. Mahfoozi's  
18 opinions were due little weight because they were "checklist opinions" that  
19 constituted "weak evidence at best." Tr. 736. Rather, Dr. Mahfoozi's opinions  
20 deserved deference because, as Plaintiff's treating physician, "he is employed to  
21 cure and has a greater opportunity to know and observe [Plaintiff] as an  
22 individual." Morgan v. Comm'r Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir.

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<sup>37</sup> See Tr. 369, 371, 375, 381, 387, 390, 393, 394, 395, 398, 402, 553, 636, 642, 644, 646, 648, 650, 655, 924, 1027 (depressed mood assessed); Tr. 368, 369, 370, 373, 378, 379, 388, 389, 391, 396, 397, 402, 548, 549, 554, 635, 636, 637, 638, 643, 644, 645, 646, 648, 653, 1026, 1027 (major depression with psychotic features assessed); Tr. 381, 390, 391, 393, 394, 395, 398, 548, 635, 637, 655, 924, 1024 (anxiety or anxious mood assessed); Tr. 368, 369, 370, 373, 378, 379, 382, 383, 384, 385, 386, 387, 388, 389, 391, 402, 549, 553, 635, 636, 638, 642, 643, 644, 645, 648, 653, 655, 1026, 1027 (auditory hallucinations assessed); Tr. 368, 369, 370, 373, 374, 377, 378, 379, 382, 383, 384, 385, 386, 387, 388, 389, 391, 402, 548, 549, 553, 635, 637, 638, 642, 643, 644, 645, 648, 652, 653, 1026 (paranoid ideations or delusions assessed).

1 1990). This error is controlling when, as is the case here, there is a significant  
2 amount of evidence in Dr. Mahfoozi’s treatment record that supports his  
3 conclusions. See Garrison, 759 F.3d at 1013 (9th Cir. 2014) (citation omitted) (the  
4 ALJ’s “fail[ure] to recognize that the opinions expressed in [a] check-the-box form  
5 . . . [prepared by the plaintiff’s treating doctor] were based on significant  
6 experience with [the plaintiff] and supported by numerous records . . . [were]  
7 entitled to weight that an otherwise unsupported and unexplained check-box form  
8 would merit” constituted an “egregious and important error[.]”).

9 Finally, the ALJ’s reasons for discounting Dr. Mahfoozi’s opinions are  
10 internally contradictory and not supported by the record. With respect to the  
11 internal contradictions in the ALJ’s reasons, as discussed above, the ALJ rejected  
12 Dr. Mahfoozi’s opinions because Plaintiff reported fewer symptoms and because  
13 Dr. Mahfoozi’s examination findings were unremarkable. Tr. 736. The ALJ,  
14 however, also rejected Dr. Mahfoozi’s opinions because Dr. Mahfoozi reported  
15 symptoms that were so severe, that the ALJ found it was “remarkable” that  
16 Plaintiff was able to “remain capable of being the caregiver for his six children[,]”  
17 and did not require “frequent” emergency care, hospitalization, or psychiatric  
18 sessions lasting more than fifteen minutes each. Id. It does not follow that Dr.  
19 Mahfoozi’s opinions can be rejected for being both unremarkable and lacking in  
20 objective findings on the one hand, while also being rejected for being so severe that  
21 it is remarkable that Plaintiff is not constantly hospitalized and can care for his  
22 children on the other hand.

23 Moreover, the evidence cited by the ALJ in support of this finding—that  
24 Plaintiff was “the” caregiver of his children, and that Plaintiff’s psychiatric  
25 sessions lasted no more than fifteen minutes each—is not supported by the record.  
26 With respect to Plaintiff’s ability to care for his children, the record suggest that  
27 Plaintiff played only a small role in parenting, and that he did not remain “the”  
28 caregiver for his six children as the ALJ suggests. Id. For example, Plaintiff

1 testified at the hearing that he cannot do anything with his children on a regular  
2 basis, and that he has taken his youngest child to school when his brother-in-law  
3 cannot take her. Tr. 784-85. In addition, notes in Plaintiff's medical charts reveal  
4 Plaintiff's wife had an "impending eye surgery" and Plaintiff's "son and wife [had]  
5 worsening medical condition[s]" that in June 2013 and, shortly thereafter, in  
6 September 2013, Plaintiff became responsible for his children's transportation. Tr.  
7 962, 969. Besides those few instances in the record of Plaintiff providing rides for  
8 his children when they, or his wife, were ill, however, the record suggests that  
9 Plaintiff was generally unable to care for his children. See e.g., Tr. 783 (Plaintiff  
10 testified that his wife "takes care of [their] little boy. He's blind."); Tr. 784  
11 (Plaintiff testified that his wife "gets mad at [him] because she's [said that] instead  
12 of having six boys, [she] ha[s] seven with [Plaintiff]."); Tr. 785 (Plaintiff testified  
13 that his children "get mad at [him] because [he] do[es]n't want to do nothing with  
14 them. They want to go out, but [he] just get[s] real nervous when [he] see[s]  
15 people around [him]. [He's] always watching [his] back . . . [and] do[es]n't trust  
16 them.").

17 With respect to Dr. Mahfoozi's opinion lacking credibility because his  
18 appointments with Plaintiff were only fifteen minutes long, the record also does not  
19 support this conclusion. As noted above, Dr. Mahfoozi recommended five times  
20 throughout the record that Plaintiff's psychiatric evaluations increase in duration  
21 from fifteen to thirty minutes per session.<sup>38</sup> As such, because ALJ's reasons for  
22 discounting Dr. Mahfoozi's opinions are internally inconsistent and also not  
23 supported by the record, the Court finds that these reasons were neither clear and  
24 convincing, nor specific and legitimate.

25 Accordingly, because the ALJ failed to provide neither clear and convincing,  
26 nor specific and legitimate reasons supported by substantial evidence in the record  
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28 <sup>38</sup> See Tr. 368, 399, 549, 554, 638 (increased duration psychiatric evaluations recommended).

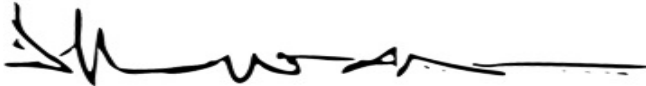
1 for rejecting Dr. Mahfoozi’s opinion, the Court finds that remand for further  
2 proceedings is appropriate so that the ALJ can, again, examine Dr. Mahfoozi’s  
3 opinions in light of the evidence discussed by the Court above. Because the Court  
4 remands as to this issue, the Court does not address the remaining issues raised by  
5 Plaintiff.

6 **IV. CONCLUSION**

7 Because the Commissioner’s decision is not supported by substantial  
8 evidence, IT IS HEREBY ORDERED that the Commissioner’s decision is  
9 **REVERSED** and this case is **REMANDED** for further administrative proceedings  
10 under sentence four of 42 U.S.C. § 405(g). See Garrison, 759 F.3d at 1009  
11 (holding that under sentence four of 42 U.S.C. § 405(g), “[t]he court shall have  
12 power to enter . . . a judgment affirming, modifying, or reversing the decision of the  
13 Commissioner . . . , with or without remanding the cause for a rehearing.” (citation  
14 and internal quotation marks omitted)).

15 IT IS SO ORDERED.

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17 DATED: 8/28/2018

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19 HONORABLE SHASHI H. KEWALRAMANI  
20 United States Magistrate Judge  
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