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

SHAWNDA LYN B.,¹

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 5:18-cv-00298-AFM

**MEMORANDUM OPINION AND
ORDER AFFIRMING DECISION
OF COMMISSIONER**

Plaintiff filed this action seeking review of the Commissioner's final decision denying her application for disability insurance benefits. In accordance with the Court's case management order, the parties have filed memorandum briefs addressing the merits of the disputed issues. The matter is now ready for decision.

BACKGROUND

Plaintiff applied for disability insurance benefits, alleging disability beginning March 3, 2014. Her application was denied initially and on reconsideration.

¹ Plaintiff's name has been partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 (Administrative Record [“AR”] 80-111.) A hearing took place on May 17, 2016
2 before an Administrative Law Judge (“ALJ”). Plaintiff (who was represented by
3 counsel) and a vocational expert (“VE”) testified at the hearing. (AR 48-79.)

4 In a decision dated August 8, 2016, the ALJ found that Plaintiff suffered from
5 the following severe impairments: irritable bowel syndrome, mitral valve prolapse,
6 osteoarthritis of the left ankle, right knee degenerative joint disease, right lateral
7 epicondylitis, degenerative disk disease, anxiety, depression, and migraine
8 headaches. (AR 22.) The ALJ concluded that Plaintiff retained the residual functional
9 capacity (“RFC”) to perform a limited range of light exertional work with the
10 following mental restrictions: Plaintiff is limited to performing simple, repetitive, and
11 routine tasks, making simple work decisions, and only occasional interaction with
12 the public and coworkers. (AR 25.) Relying upon the testimony of the VE, the ALJ
13 found that Plaintiff was capable of performing work existing in significant numbers
14 in the national economy. (AR 32.) Accordingly, the ALJ determined that Plaintiff
15 was not disabled. (AR 33.)

16 The Appeals Council subsequently denied Plaintiff’s request for review (AR
17 2-7), rendering the ALJ’s decision the final decision of the Commissioner.

18 **DISPUTED ISSUES**

- 19 1. Whether the ALJ properly evaluated the opinion of the consultative clinical
20 psychologist, William Weiss, Ph.D.
- 21 2. Whether the ALJ erred in relying on the testimony of the VE.

22 **STANDARD OF REVIEW**

23 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to
24 determine whether the Commissioner’s findings are supported by substantial
25 evidence and whether the proper legal standards were applied. *See Treichler v.*
26 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial
27 evidence means “more than a mere scintilla” but less than a preponderance. *See*
28 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d

1 1028, 1035 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a
2 reasonable mind might accept as adequate to support a conclusion.” *Richardson*, 402
3 U.S. at 401. This Court must review the record as a whole, weighing both the
4 evidence that supports and the evidence that detracts from the Commissioner’s
5 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more
6 than one rational interpretation, the Commissioner’s decision must be upheld. *See*
7 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

8 DISCUSSION

9 1. The ALJ’s evaluation of Dr. Weiss’s opinion.

10 a. Relevant Evidence.²

11 Plaintiff’s Treatment at Kaiser Permanente

12 On May 20, 2014, Plaintiff saw Jeffrey Ford, M.D., for complaints of
13 epigastric pain. During the office visit, Plaintiff also complained of anxiety, which
14 she attributed to stressors related to her job. Dr. Ford recommended that Plaintiff
15 increase her antidepressant medication fluoxetine (Prozac). Plaintiff declined,
16 preferring to see her primary care physician. (AR 588-589.) The following day,
17 Plaintiff saw Mary Ann Browning, N.P., complaining of stress. N.P. Browning
18 diagnosed Plaintiff with anxiety disorder. Treatment notes indicate that Plaintiff
19 experienced “anxiety related to workman’s comp issues.” Plaintiff reported that
20 fluoxetine had been helping her, but her stress level increased due to work issues.
21 (AR 591.) N.P. Browning increased the dosage of Prozac and recommended that
22 when Plaintiff’s work-related issues improved, she taper the medication. (AR 592.)

23 At a follow up appointment in June 2014, N.P. Browning diagnosed Plaintiff
24 with adjustment disorder with mixed anxiety and depressed mood. Treatment notes
25 indicate that Plaintiff was experiencing stress related to her “work situation.” The
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27 ² Plaintiff does not contest the ALJ’s findings regarding her physical impairments. Thus, the
28 Court’s discussion of the record focuses on the medical evidence relevant to Plaintiff’s mental
impairments.

1 treatment plan consisted of: “off work for now due to stress. Return to clinic in July
2 for reevaluation.” (AR 596.)

3 In July 2014, Plaintiff informed N.P. Browning that she was interested in
4 trying the medications Lorazepam (Ativan) and Trazadone because her sister had
5 reported relief from her own anxiety. (AR 1048.) Plaintiff also expressed a desire to
6 discontinue Prozac. N.P. Browning prescribed Lorazepam and Trazodone. (AR
7 1049-1050.)

8 Notes from an August 2014 office visit for a medication review indicate that
9 Plaintiff was weaning herself off of Prozac and it was “going well.” Plaintiff reported
10 that Trazadone and Lorazepam were helping. Plaintiff’s Prozac dosage was
11 decreased. (AR 602-603.) During a subsequent follow up visit with N.P. Browning,
12 Plaintiff reported that Xanax (Alprazolam) worked better than Ativan. (AR 1058.)

13 Plaintiff saw N.P. Browning again in September 2014. Based upon Plaintiff’s
14 complaints of abdominal pain, N.P. Browning ordered a CT scan. N.P. Browning
15 also referred Plaintiff for mental health psychotherapy for stress anxiety. (AR 611-
16 612.) It does not appear that Plaintiff ever obtained psychotherapy.

17 In October 2014, Plaintiff obtained a refill for her Xanax prescription. (AR
18 1073.) In her November 2014 follow up, Plaintiff reported difficulties sleeping. She
19 told N.P. Browning that Trazadone did not help, but Ambien did help. She was
20 prescribed Ambien for sleep and Cymbalta for anxiety, depression, and fibromyalgia.
21 (AR 1077.)

22 At a follow-up appointment in January 2015, Plaintiff complained of
23 headaches. She did not mention depression, anxiety, or other mental impairments.
24 Her medications were refilled. (AR 1089-1094.)

25 N.P. Browning completed a mental capacity assessment in September 2014.
26 She opined that Plaintiff had no limitations in the following areas of functioning: the
27 ability to remember locations and work-like procedures; the ability to understand and
28 remember short and simple instructions; the ability to understand and remember

1 detailed instructions; the ability to carry out short and simple instructions; the ability
2 to carry out detailed instructions; the ability to maintain attention and concentration
3 for extended periods, the ability to perform activities within a schedule, maintain
4 regular attendance, and be punctual within customary tolerances; the ability to sustain
5 an ordinary routine without special supervision; the ability to work in coordination
6 with or in proximity to others; the ability to make simple work-related decisions. (AR
7 1270-1271.) N.P. Browning opined that Plaintiff had slight limitations in the
8 following areas of functioning: the ability to complete a normal workday without
9 interruptions from psychologically based symptoms; the ability to complete a normal
10 workweek without interruptions from psychologically based symptoms; and the
11 ability to perform at a consistent pace with a standard number and length of rest
12 periods. She attributed these slight limitations to Plaintiff's fatigue and depression.
13 (AR 1271.) Last, N.P. Browning opined that Plaintiff's mental condition imposed no
14 limitations on Plaintiff's capacity for social interaction or adapting to work
15 environment. (AR 1271-1272.)

16 Dr. Weiss

17 Clinical psychologist William Weiss, Ph.D., performed a psychological
18 diagnostic evaluation of Plaintiff in June 2014. Dr. Weiss summarized Plaintiff's
19 subjective complaints regarding depression and anxiety. In particular, he noted that
20 Plaintiff stated she has depression and low energy, and is irritable. When she spoke
21 about her depression, Plaintiff began to cry. She told Dr. Weiss that she had thought
22 of suicide two years earlier, but she did not think she would ever act upon it. Plaintiff
23 claimed to have post-traumatic stress disorder, although she had never received such
24 a diagnosis. She told Dr. Weiss that she felt "pretty anxious all the time." (AR 564.)

25 At the time of Dr. Weiss's evaluation, Plaintiff was taking Prozac for her
26 psychological problems and Ambien for sleep, in addition to pain medication.
27 Plaintiff stated that she had once obtained mental health counseling when she got her
28 second divorce, but she was not currently in counseling. He noted that Plaintiff drove

1 to the interview and she was cooperative. (AR 565-566.)

2 Dr. Weiss set out Plaintiff's function report in detail,³ noting that Plaintiff
3 claimed she was not able "to do anything," including hobbies or interests; not able to
4 pay attention for longer than five minutes; not able to follow spoken instructions; and
5 does not finish what she started. (AR 566.) He also reviewed an undated report from
6 Kaiser Permanente which lists anxiety among Plaintiff's diagnoses and indicated
7 Plaintiff took escitalopram and sertraline for depression. (AR 566.)

8 Dr. Weiss performed a mental status examination, which revealed the
9 following: Plaintiff's proverb interpretation was very good; her abstract thinking was
10 adequate; her remote memory was very good; her information was very good; and
11 she was oriented times three. (AR 567-568.) Plaintiff was able to obtain four digits
12 forward but only three digits backward. She could not remember three objects after
13 five minutes. It appears that she was able to recall a news event from the day before
14 and the route to Dr. Weiss's office. Dr. Weiss concluded that Plaintiff's recent
15 memory was "less than adequate." (AR 567.) Plaintiff was able to calculate $3+4=7$,
16 but unable to multiply 7×9 or subtract 17 cents from a dollar. Similarly, she could
17 not count backward by 7's or by 3's. Thus, Dr. Weiss concluded that Plaintiff's
18 calculations and serial sevens were impaired. (AR 567.) In evaluating Plaintiff's
19 judgment and insight, Dr. Weiss asked what Plaintiff would do if she discovered fire
20 in a theatre. Plaintiff answered "Run." He asked what she would do if she lost a
21 library book, and she answered "Cry – take it back, I don't know." When asked what
22 she would do if she found a stamped addressed envelope on the sidewalk, she
23 responded that she would "Put it in the mailbox." Dr. Weiss concluded that Plaintiff's
24 judgment was impaired. (AR 568.)

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³ The bulk of Dr. Weiss's report consists of recitation of Plaintiff's statements regarding her symptoms. (See AR 564-566, 568-570.)

1 According to Dr. Weiss's report, Plaintiff showed facies and tears indicative
2 of depression. Her speech was clear and intelligible, but she had "problems with
3 logic." (AR 568.)

4 Dr. Weiss noted that Plaintiff lived with her husband and described a typical
5 day as involved rising at 6 a.m., doing some cooking, washing the dishes, and doing
6 the laundry. She told Dr. Weiss that she still liked to dance when she went out with
7 her husband, but that her marriage was not "going well." She attributed her marital
8 problems to lack of communication which resulted from "her boss creating a hostile
9 work environment, which has upset her." (AR 569.) Plaintiff also had two close
10 friends who she saw every three weeks to two months. She went to bed between 8 and
11 9 p.m. (AR 569.)

12 Dr. Weiss diagnosed Plaintiff with major depressive disorder, recurrent,
13 moderate and generalized anxiety disorder, with panic attacks. (AR 569.) Under the
14 heading "Prognosis," Dr. Weiss highlighted some of Plaintiff's physical complaints,
15 including her inability to remain on her feet too long as well as neck and back pain,
16 and then remarked, "[w]hile [Plaintiff] reported a number of physical problems as
17 reasons why she could not work, she also talked about psychological issues related
18 to focusing and being able to stay awake." (AR 570.) Dr. Weiss opined that, although
19 Plaintiff took medication, she needed "more intensive mental health treatment,"
20 including a reevaluation of her medication and the addition of psychotherapy. In
21 Dr. Weiss's opinion, Plaintiff

22 needs to explore the reasons why her depression has become a
23 significant problem and why she is anxious all the time. These are
24 important problems which interfere with her ability to work. Of course,
25 her physical limitations will also have to be assessed in evaluating her
26 capacity to return to work. At the present time, she would not be able to
27 maintain gainful employment.

28 (AR 570.) Under the heading "Medical Source Statement," Dr. Weiss repeated that

1 Plaintiff had not received adequate treatment for her depression and anxiety and “she
2 should seek it, particularly psychotherapy.” At the same time, he opined that “the
3 long term nature of these problems tends to suggest that she would not be able to
4 return to work in the future.” (AR 570.)

5 State Agency physicians

6 State Agency physicians Patricia Kraft, Ph.D., and Michael Regets, Ph.D.,
7 reached the same conclusions about the functional limitations caused by Plaintiff’s
8 mental impairment. Specifically, both opined that Plaintiff was not significantly
9 limited in her ability to understand, remember, and carry out short and simple
10 instructions; perform activities within a schedule, maintain regular attendance, and
11 be punctual within customary tolerances; sustain an ordinary routine without special
12 supervision; work in coordination with or in proximity to others without being
13 distracted by them; to make simple work-related decisions; ask simple questions or
14 request assistance; and maintain socially appropriate behavior. (AR 91-92, 107-109.)
15 Both opined that Plaintiff was moderately limited in her ability to understand,
16 remember and carry out detailed instructions; maintain attention and concentration
17 for extended periods; complete a normal workday and workweek without
18 interruptions for psychological symptoms and perform at a consistent pace without
19 an unreasonable number and length of rest periods; interact appropriately with the
20 general public; accept instructions and respond appropriately to criticism from
21 supervisors; get along with coworkers or peers without distracting them or exhibiting
22 behavioral extremes; respond appropriately to changes in the work setting. (AR 91-
23 92, 106-109.) Both physicians determined that Plaintiff retained the ability to perform
24 simple work within her physical limitations and would work best with limited contact
25 with others. (AR 92, 107.)

26 Dr. Reget acknowledged that the opinion of the consultative examiner,
27 Dr. Weiss, was more restrictive than his own opinion. According to Dr. Reget,
28 Dr. Weiss relied heavily on the subjective report of symptoms and limitations

1 provided by Plaintiff, but the totality of the evidence did not support Dr. Weiss’s
2 opinion. (AR 109.)

3 Plaintiff’s Testimony

4 At the hearing, the ALJ noted that the record contained evidence of anxiety
5 and depression and asked Plaintiff if she still suffered from those conditions. Plaintiff
6 answered, “Yeah, I get anxiety.” (AR 63.) She elaborated that she was a “nervous
7 person” and she could not relax; her body was “just always tense.” (AR 63-64.)
8 Plaintiff said that she took Xanax for her anxiety. The ALJ asked if she took it
9 throughout the day or only when the anxiety surfaced, and Plaintiff responded, “I
10 should take it every day, but I don’t. I don’t take it like [the doctor] asks me to, so
11 that would probably help if I did.” (AR 64.) She explained that she was concerned
12 about taking Xanax because her doctor told her that she could become addicted to it
13 if she used it regularly. (AR 69.)

14 **b. The ALJ’s Decision.**

15 In assessing Plaintiff’s RFC, the ALJ discussed the medical record and
16 opinions. The ALJ assigned significant weight to N.P. Browning’s mental health
17 assessment, finding it consistent with Plaintiff’s activities and the limited mental
18 health treatment records. (AR 29.) The ALJ gave little weigh to Dr. Weiss’s opinion.
19 The ALJ noted that Dr. Weiss’s opinion failed to account for Plaintiff’s lack of
20 treatment. Further, the ALJ considered Dr. Weiss’s opinion that Plaintiff would not
21 be able to work in the future whether or not she obtained treatment to be speculative.
22 The ALJ also found it significant that Dr. Weiss based his conclusion upon the
23 deficits in Plaintiff’s mental status examination while ignoring Plaintiff’s normal
24 performance on proverbs, abstraction, remote memory, information, and orientation.
25 (AR 30.) In addition, the ALJ pointed out that Dr. Weiss based his opinion about
26 Plaintiff’s social limitations based upon marital arguments, yet Plaintiff indicated that
27 she went dancing with her husband when they were not arguing and she interacted
28 with two close friends. The ALJ found that much of Dr. Weiss’s opinion appeared to

1 be based on speculation. The ALJ contrasted Dr. Weiss’s opinion with the opinion
2 of N.P. Browning. (AR 30-31.)

3 The ALJ also gave significant weight to the opinion of State agency physician
4 Dr. Regets, who restricted Plaintiff to simple work and limited contact with others.
5 The ALJ found that opinion to be consistent with Plaintiff’s activities, N.P.
6 Browning’s assessment, and the objective findings from Dr. Weiss’s examination.
7 Accordingly, the ALJ adopted those restrictions in formulating Plaintiff’s RFC. (AR
8 31.)

9 **c. Analysis.**

10 The RFC is the most a claimant can still do despite his or her limitations.
11 *Smolen v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996) (citing 20 C.F.R.
12 § 404.1545(a)). In determining a claimant’s RFC, an ALJ must consider all relevant
13 evidence of record, including medical opinions. *Tommasetti v. Astrue*, 533 F.3d 1035,
14 1041 (9th Cir. 2008); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006);
15 *see* 20 C.F.R. § 404.1527(b). Before rejecting the uncontradicted opinion of a treating
16 or examining physician, an ALJ must provide clear and convincing reasons for doing
17 so. *Hill v. Astrue*, 698 F.3d 1153, 1159-1160 (9th Cir. 2012); *Carmickle v. Comm’r,*
18 *Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). “Even if contradicted by
19 another doctor, the opinion of an examining doctor can be rejected only for specific
20 and legitimate reasons that are supported by substantial evidence in the record.” *Hill*,
21 698 F.3d at 1160 (quoting *Regennitter v. Comm’r of the Soc. Sec. Admin.*, 166 F.3d
22 1294, 1298-1299 (9th Cir. 1999)). An ALJ meets the requisite specific and legitimate
23 standard “by setting out a detailed and thorough summary of the facts and conflicting
24 clinical evidence, stating his interpretation thereof, and making findings.” *Trevizo v.*
25 *Berryhill*, 871 F.3d 664, 675 (9th Cir. 2017) (citations and internal quotation marks
26 omitted). Because Dr. Weiss’s opinion was contradicted by the opinions of the State
27 agency physicians, the ALJ was required to provide specific and legitimate reasons
28 supported by substantial evidence before rejecting it.

1 The Commissioner identifies five reasons the ALJ provided for rejecting
2 Dr. Weiss's opinion: (1) Dr. Weiss's opinion failed to account for Plaintiff's lack of
3 adequate mental health treatment, and therefore, his opinion was speculative.
4 (2) Dr. Weiss's opinion was inconsistent with his own findings and examination.
5 (3) Dr. Weiss's opinion was inconsistent with Plaintiff's reported daily activities.
6 (4) Dr. Weiss's opinion was inconsistent with the evidence in the record which
7 showed she did not have social limitations. (5) Dr. Weiss's opinion was inconsistent
8 with N.P. Browning's assessment, which was in turn, consistent with the record.
9 (ECF No. 26 at 6-9.) The Court concludes that at least two of the foregoing constitute
10 specific and legitimate reasons for the ALJ's decision – namely, that Dr. Weiss's
11 opinion was unsupported by his own findings and inconsistent with the record as a
12 whole. *See Tommasetti*, 533 F.3d at 1041 (inconsistency with objective medical
13 evidence); *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (lack of support
14 by clinical findings).⁴

15 In considering Dr. Weiss's opinion, the ALJ noted his clinical findings – that
16 Plaintiff exhibited deficiencies in calculations, serial sevens, and insight, and her
17 recent memory was “less than adequate” – but observed that Dr. Weiss failed to
18 address his findings that Plaintiff's mental functioning in other areas was either very
19 good or adequate. (AR 30.) The ALJ pointed out that Dr. Weiss's opinion was
20 inconsistent with the mental health assessment from N.P. Browning. (AR 31.) In
21 particular, the ALJ found it significant that N.P. Browning, who had treated Plaintiff

22 ⁴ In discussing Dr. Weiss's opinion, the ALJ does not explicitly use the words “unsupported by his
23 clinical findings.” Nonetheless, an ALJ is not required to “recite [any] magic words” to justify
24 rejecting evidence, provided the ALJ's grounds for doing so can reasonably be inferred from his or
25 her decision. *Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir.1989) (“[O]ur cases do require such
26 an incantation. As a reviewing court, we are not deprived of our faculties for drawing specific and
27 legitimate inferences from the ALJ's opinion. It is proper for us to read the [ALJ's decision], and
28 draw inferences relevant to [the rejected evidence], if those inferences are there to be drawn.”).
Furthermore, the Commissioner identifies this as a reason provided by the ALJ (*see* ECF No. 26 at
6-7), and Plaintiff does not dispute this reading of the ALJ's decision. Rather, in her Reply, Plaintiff
argues that the ALJ erred by relying on such a reason because he essentially substituted his own
lay opinion. (ECF No. 27 at 2-3.)

1 since 2010,⁵ assessed no more than slight limitation in every aspect of Plaintiff's
2 mental function. The ALJ found that N.P. Browning's opinions were consistent with
3 the record. (AR 31, *see* AR 1270-1272.)

4 Substantial evidence supports the ALJ's conclusion that Dr. Weiss's opinion
5 was unsupported by his own findings and by the record as a whole. Dr. Weiss's report
6 contains the aforementioned mental status examination findings indicating that
7 Plaintiff was somewhat impaired in several areas of mental but not impaired in others.
8 At least in the absence of further explanation by Dr. Weiss, it was reasonable for the
9 ALJ to conclude that Dr. Weiss's findings that Plaintiff exhibited deficiencies in
10 calculation, serial sevens, recent memory and insight did not support his conclusion
11 that she was rendered unable to perform all work activity. Furthermore, the ALJ
12 found it significant that Dr. Weiss's opinion directly contradicted the opinion of N.P.
13 Browning, who had treated Plaintiff's mental condition for several years. N.P.
14 Browning's opinion that Plaintiff's mental impairment did not result in significant
15 functional restrictions was consistent with the entire record. As set forth in detail
16 above, Plaintiff's mental health treatment was minimal. No treating physician opined
17 that Plaintiff's mental impairment imposed any significant functional limitations.
18 Nothing in the record supports Dr. Weiss's opinion that Plaintiff was disabled by
19 depression or anxiety. In addition, although Dr. Weiss emphasized that Plaintiff had
20 never obtained adequate mental health treatment and recommended both reevaluation
21 of her medication and psychotherapy, he also opined that Plaintiff would be unable
22 to work even if she obtained appropriate mental health care. The ALJ reasonably
23 concluded that Dr. Weiss's opinion that Plaintiff would be unable to work
24 notwithstanding appropriate treatment to be speculative.

25 Where, as here, the ALJ's interpretation of the medical evidence and the record
26 is reasonable, the Court will not engage in second-guessing. *See Rollins v.*

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⁵ According to N.P. Browning, she began treating Plaintiff for anxiety in January 2011. (AR 638.)

1 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *see also Molina v. Astrue*, 674 F.3d
2 1104, 1111 (9th Cir. 2012) (even when evidence is susceptible to more than one
3 rational interpretation, the court must uphold the ALJ’s findings if they are supported
4 by inferences reasonably drawn from the record). In sum, the ALJ did not err by
5 rejecting Dr. Weiss’s opinion as unsupported by both objective findings by the record
6 as a whole. *See Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir.
7 2004); *see e.g., Timmons v. Comm’r of Soc. Sec.*, 546 F. Supp. 2d 778, 793 (E.D.
8 Cal. 2008) (objective findings that plaintiff was well-groomed, her speech was clear,
9 her thought processes were logical and goal-oriented and her intellectual functioning
10 was good “certainly contradict [physician]’s opinion that plaintiff could not perform
11 full-time work”); *see also Coaty v. Colvin*, 673 F. App’x 787, 787-788 (9th Cir. 2017)
12 (ALJ properly rejected treating physician’s medical opinion because it was
13 “speculative” as well as inconsistent with activities of daily living).⁶

14 Plaintiff disagrees with the characterization of Dr. Weiss’s opinion as
15 speculative and lacking in objective support. She points out that psychiatric
16 impairments are, by nature, not easily amenable to substantiation by objective testing.
17 (ECF No. 27 at 1-2.) It is true that in the case of mental impairments, clinical or
18 objective evidence may consist of the diagnoses and observations of psychiatric
19 professionals. *See Thompson v. Colvin*, 2015 WL 470394, at *5 (C.D. Cal. Feb. 3,
20 2015). But this does not insulate psychiatric opinions from review. Here, the ALJ did
21 not reject Dr. Weiss’s opinion based upon an absence of objective clinical evidence.
22 Rather, he accepted Dr. Weiss’s diagnoses as well as his objective findings but ruled
23 that those findings did not support Dr. Weiss’s conclusion that Plaintiff was unable
24 to perform any work.

25 Plaintiff also challenges the ALJ’s reliance on N.P. Browning’s opinion. It
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27 ⁶ The ALJ provided additional reasons for rejecting Dr. Weiss’s opinion, the validity of which the
28 parties dispute. Because the Court finds the ALJ provided legally sufficient reasons discussed
above, it need not discuss additional reasons for his decision.

1 appears that Plaintiff contends that the ALJ erred by failing to weigh N.P. Browning's
2 opinion using the factors set forth in 20 C.F.R. §§ 404.1527(c)(2)-(6). (ECF No. 21
3 at 21-22.) However, that regulation applies only to medically acceptable sources, a
4 category that does not include nurse practitioners. *See Molina*, 674 F.3d at 1111; *cf.*
5 *Gomez v. Chater*, 74 F.3d 967, 971 (9th Cir. 1996) (a nurse practitioner could be
6 considered a medically acceptable source where she worked under a physician's
7 close supervision such that she acted as the physician's agent).

8 In addition, Plaintiff argues that the ALJ should have afforded more weight to
9 Dr. Weiss because he is an examining clinical psychologist as opposed to a non-
10 examining State agency physician or a nurse practitioner. (ECF No. 21 at 23.) The
11 weight to which a medical opinion is entitled is a matter for the ALJ to decide. So
12 long as he provided legally sufficient reasons for his determination of the weight of
13 the evidence – which the ALJ did in Plaintiff's case – the Court may not substitute
14 its own judgment. Furthermore, and contrary to Plaintiff's suggestion, the ALJ was
15 entitled to rely upon the opinion of the State agency physician. *See generally Thomas*
16 *v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) ("The opinions of non-treating or non-
17 examining physicians may also serve as substantial evidence when the opinions are
18 consistent with independent clinical findings or other evidence in the record); 20
19 C.F.R. § 404.1527(c)(4) (the agency gives more weight to opinions that are consistent
20 with the record as a whole).

21 Finally, Plaintiff discusses Ninth Circuit authority holding that an RFC
22 limiting a claimant to simple, routine, repetitive work does not account for moderate
23 limitations in concentration, persistence, or pace. (ECF No. 21 at 19-21.) Plaintiff
24 points out that the ALJ afforded significant weight to the State agency physician's
25 opinion that Plaintiff had moderate difficulties in concentration, persistence, and
26 pace, and adopted that finding. (ECF No. 21 at 20-21, citing AR 24-25, 103.) It is not
27 clear how these cases or assertions relate to Plaintiff's claim that the ALJ erred in
28 rejecting Dr. Weiss's opinion. Assuming Plaintiff intended to raise an entirely

1 separate claim that the ALJ failed to incorporate all of Plaintiff’s limitations into the
2 RFC, her claim lacks merit.

3 In *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008), the Ninth
4 Circuit held that “an ALJ’s assessment of a claimant adequately captures restrictions
5 related to concentration, persistence, or pace when the assessment is consistent with
6 restrictions identified in the medical testimony.” Based on the fact that there was
7 medical testimony – a second doctor’s opinion, that the plaintiff had the ability to
8 perform simple tasks – the Ninth Circuit found that the ALJ did not err in finding
9 that the plaintiff had the RFC to perform simple, routine work. *Id.* at 1173-1175 (“The
10 ALJ translated *Stubbs-Danielson*’s condition, including the pace and mental
11 limitations, into the only concrete restrictions available to him – Dr. Eather’s
12 recommended restriction to ‘simple tasks.’”). An ALJ may sufficiently account for
13 moderate difficulties in concentration, persistence, and pace by assessing an RFC
14 restricting the claimant to simple, routine, repetitive tasks. *See Hughes v. Colvin*, 599
15 F. App’x 765, 766 (9th Cir. 2015); *Stubbs-Danielson*, 539 F.3d at 1171 (ALJ’s
16 limitation to “simple, routine, repetitive” work sufficiently accommodated
17 physician’s opinion evidence that claimant had “moderate” limitation in pace and
18 “other mental limitations regarding attention, concentration, and adaption”);
19 *Williams v. Colvin*, 2016 WL 7480245, at *7-8 (C.D. Cal. Dec. 29, 2016) (ALJ
20 adequately accounted for medical opinion that plaintiff suffered moderate difficulties
21 in concentration, persistence, and pace by assessing plaintiff with the mental RFC to
22 perform “simple, repetitive tasks”). This is what the ALJ did here. Dr. Regets opined
23 that Plaintiff was moderately limited in maintaining attention and concentration and
24 was limited to performing simple tasks. (AR 107.) The ALJ adopted this opinion in
25 full.

26 Plaintiff contends that *Stubb-Danielson* does not apply to her case (ECF No.
27 21 at 20), but she fails to explain why this is so. The Court notes that there is a line
28 of cases holding that an ALJ errs by limiting a claimant to simple, repetitive, or

1 unskilled work after finding the claimant has moderate limitation in maintaining
2 concentration, persistence, or pace. *See, e.g., Brink v. Comm’r of Soc. Sec. Admin.*,
3 343 F. App’x 211, 212 (9th Cir. Aug. 18, 2009); *John C. v. Berryhill*, 2018 WL
4 3388918, at *9 (C.D. Cal. July 9, 2018); *Alva v. Colvin*, 2016 WL 6561452, at *6
5 (C.D. Cal. Nov. 2, 2016). These cases are distinguishable, however, because here the
6 ALJ relied upon a medical opinion that the claimant could perform simple, repetitive
7 work. *Cf. Banks v. Colvin*, 2017 WL 113055, at *4 (C.D. Cal. Jan. 11, 2017) (“The
8 ALJ did not rely on medical evidence in the record, including a medical source
9 statement, establishing that Plaintiff was capable of unskilled work despite her
10 moderate limitation in concentration, persistence, or pace. Therefore, the ALJ erred
11 in failing to consider and include that limitation in determining Plaintiff’s ability to
12 engage in unskilled work.”).

13 **2. Whether Plaintiff could perform a significant number of jobs in the**
14 **national economy.**

15 At Step Five of the sequential process, the Commissioner bears the burden of
16 showing that, given the claimant’s RFC, she can engage in other substantial gainful
17 work existing in significant numbers in the national economy. *Osenbrock v. Apfel*,
18 240 F.3d 1157, 1162 (9th Cir. 2001). Where a claimant has significant non-exertional
19 impairments, the ALJ appropriately relies upon the testimony of a VE to make such
20 a determination. The VE must identify jobs in the national economy with physical
21 and mental requirements that fall within the claimant’s RFC. *Osenbrock*, 240 F.3d at
22 1162-1163.

23 In the present case, the ALJ proposed a hypothetical question including all of
24 the limitations in Plaintiff’s RFC. The VE testified that an individual with Plaintiff’s
25 age, education, work experience and RFC could perform the jobs of mail clerk (DOT
26 209.687-026) and officer helper (DOT 239.567-010). (AR 73-75.) The ALJ noted
27 that the job of mail clerk had a reasoning level of 3, which is inconsistent with simple,
28 routine, repetitive work. He concluded that Plaintiff could perform the job of office

1 helper, which has 148,000 jobs in the national economy. (AR 32.)

2 Plaintiff contends that the ALJ erred by finding she could perform the job of
3 office helper because that occupation requires performance of “a variety of duties,
4 often changing from one task to another of a different nature without loss of
5 efficiency or composure.” (ECF No. 21 at 24.)⁷ According to Plaintiff, performing a
6 variety of duties is inconsistent with her limitation to simple, routine, and repetitive
7 tasks.

8 Plaintiff’s argument has been rejected by other courts in this Circuit, which
9 have found that the office helper position is compatible with a limitation to simple,
10 repetitive tasks. *See Jerome M. H. v. Berryhill*, 2019 WL 994966, at *2 (C.D. Cal.
11 Feb. 7, 2019); *Lewis v. Colvin*, 2016 WL 397626, at *5 (E.D. Cal. Feb. 2, 2016),
12 *aff’d*, 708 F. App’x 919 (9th Cir. 2018); *Etter v. Astrue*, 2010 WL 4314415, at *4
13 (C.D. Cal. Oct. 22, 2010); *Chavez v. Astrue*, 699 F. Supp. 2d 1125, 1136 (C.D. Cal.
14 2009). As those courts have noted, the tasks set forth in the job description involve
15 simple, repetitive tasks. Specifically, the job of office helper is described as follows:

16 Furnishes workers with clerical supplies. Opens, sorts, and distributes
17 incoming mail, and collects, seals, and stamps outgoing mail. Delivers
18 oral or written messages. Collects and distributes paperwork, such as
19 records or timecards, from one department to another. Marks, tabulates,
20 and files articles and records. May use office equipment, such as
21 envelope-sealing machine, letter opener, record shaver, stamping
22 machine, and transcribing machine. May deliver items to other business
23 establishments.

24 DOT 239.567-010.

26 ⁷ Plaintiff incorrectly attributes this quote to the Dictionary of Occupational Titles. It appears that
27 the quote is from the Revised Handbook for Analyzing Jobs. *See Jerome M. H. v. Berryhill*, 2019
28 WL 994966, at *2 (C.D. Cal. Feb. 7, 2019) (citing Revised Handbook for Analyzing Jobs (1991),
p. 10:2).

1 Nothing about a limitation to simple, repetitive tasks precludes the
2 performance of a *variety* of such tasks. Thus, the VE's testimony that Plaintiff could
3 perform as an office helper did not deviate from the DOT and did not conflict with
4 Plaintiff's RFC. Accordingly, the ALJ was entitled to rely on the VE's testimony in
5 finding that Plaintiff could perform work existing in significant numbers in the
6 national economy.

7 **ORDER**

8 For the foregoing reasons, IT IS ORDERED that Judgment be entered
9 affirming the decision of the Commissioner and dismissing this action with prejudice.

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11 DATED: 4/3/2019

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14 ALEXANDER F. MacKINNON
15 UNITED STATES MAGISTRATE JUDGE
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