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

TERESA IOANE LUALEMAGA,  
Plaintiff,

v.

NANCY BERRYHILL, DEPUTY  
COMMISSIONER OF OPERATIONS  
FOR THE SOCIAL SECURITY  
ADMINISTRATION,  
Defendant.

No. ED CV 18-444-PLA

**MEMORANDUM OPINION AND ORDER**

**I.**

**PROCEEDINGS**

Plaintiff filed this action on March 3, 2018, seeking review of the Commissioner's<sup>1</sup> denial of her application for Supplemental Security Income ("SSI") payments. The parties filed Consents to proceed before a Magistrate Judge on April 2, 2018, and April 3, 2018. Pursuant to the Court's

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<sup>1</sup> On March 6, 2018, the Government Accountability Office stated that as of November 17, 2017, Nancy Berryhill's status as Acting Commissioner violated the Federal Vacancies Reform Act (5 U.S.C. § 3346(a)(1)), which limits the time a position can be filled by an acting official. As of that date, therefore, she was not authorized to continue serving using the title of Acting Commissioner. As of November 17, 2017, Berryhill has been leading the agency from her position of record, Deputy Commissioner of Operations.

1 Order, the parties filed a Joint Submission (alternatively “JS”) on December 4, 2018, that  
2 addresses their positions concerning the disputed issues in the case. The Court has taken the  
3 Joint Submission under submission without oral argument.

4  
5 **II.**

6 **BACKGROUND**

7 Plaintiff was born on October 13, 1958. [Administrative Record (“AR”) at 35, 182.] The ALJ  
8 determined that plaintiff has no past relevant work experience. [AR at 35.]

9 On February 20, 2014, plaintiff filed an application for SSI payments, alleging that she has  
10 been unable to work since April 1, 2002. [AR at 25; see also AR at 82.] After her application was  
11 denied initially and upon reconsideration, plaintiff timely filed a request for a hearing before an  
12 Administrative Law Judge (“ALJ”). [AR at 127.] A hearing was held on November 18, 2016, at  
13 which time plaintiff appeared represented by an attorney, and testified on her own behalf. [AR  
14 at 41-71.] A vocational expert (“VE”) also testified. [AR at 67-70.] On December 15, 2016, the  
15 ALJ issued a decision concluding that plaintiff was not under a disability since February 20, 2014,  
16 the date the application was filed. [AR at 25-36.] Plaintiff requested review of the ALJ’s decision  
17 by the Appeals Council. [AR at 178-79.] When the Appeals Council denied plaintiff’s request for  
18 review on January 25, 2018 [AR at 1-6], the ALJ’s decision became the final decision of the  
19 Commissioner. See Sam v. Astrue, 550 F.3d 808, 810 (9th Cir. 2008) (per curiam) (citations  
20 omitted). This action followed.

21  
22 **III.**

23 **STANDARD OF REVIEW**

24 Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner’s  
25 decision to deny benefits. The decision will be disturbed only if it is not supported by substantial  
26 evidence or if it is based upon the application of improper legal standards. Berry v. Astrue, 622  
27 F.3d 1228, 1231 (9th Cir. 2010) (citation omitted).

28 “Substantial evidence means more than a mere scintilla but less than a preponderance;

1 it is such relevant evidence as a reasonable mind might accept as adequate to support a  
2 conclusion.” Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017) (citation omitted). “Where  
3 evidence is susceptible to more than one rational interpretation, the ALJ’s decision should be  
4 upheld.” Id. (internal quotation marks and citation omitted). However, the Court “must consider  
5 the entire record as a whole, weighing both the evidence that supports and the evidence that  
6 detracts from the Commissioner’s conclusion, and may not affirm simply by isolating a specific  
7 quantum of supporting evidence.” Id. (quoting Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir.  
8 2014) (internal quotation marks omitted)). The Court will “review only the reasons provided by the  
9 ALJ in the disability determination and may not affirm the ALJ on a ground upon which he did not  
10 rely.” Id. (internal quotation marks and citation omitted); see also SEC v. Chenery Corp., 318 U.S.  
11 80, 87, 63 S. Ct. 454, 87 L. Ed. 626 (1943) (“The grounds upon which an administrative order  
12 must be judged are those upon which the record discloses that its action was based.”).

#### 14 IV.

#### 15 THE EVALUATION OF DISABILITY

16 Persons are “disabled” for purposes of receiving Social Security benefits if they are unable  
17 to engage in any substantial gainful activity owing to a physical or mental impairment that is  
18 expected to result in death or which has lasted or is expected to last for a continuous period of  
19 at least twelve months. Garcia v. Comm’r of Soc. Sec., 768 F.3d 925, 930 (9th Cir. 2014) (quoting  
20 42 U.S.C. § 423(d)(1)(A)).

#### 22 A. THE FIVE-STEP EVALUATION PROCESS

23 The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing  
24 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lounsbury v. Barnhart, 468  
25 F.3d 1111, 1114 (9th Cir. 2006) (citing Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999)).  
26 In the first step, the Commissioner must determine whether the claimant is currently engaged in  
27 substantial gainful activity; if so, the claimant is not disabled and the claim is denied. Lounsbury,  
28 468 F.3d at 1114. If the claimant is not currently engaged in substantial gainful activity, the

1 second step requires the Commissioner to determine whether the claimant has a "severe"  
2 impairment or combination of impairments significantly limiting her ability to do basic work  
3 activities; if not, a finding of nondisability is made and the claim is denied. Id. If the claimant has  
4 a "severe" impairment or combination of impairments, the third step requires the Commissioner  
5 to determine whether the impairment or combination of impairments meets or equals an  
6 impairment in the Listing of Impairments ("Listing") set forth at 20 C.F.R. § 404, subpart P,  
7 appendix 1; if so, disability is conclusively presumed and benefits are awarded. Id. If the  
8 claimant's impairment or combination of impairments does not meet or equal an impairment in  
9 the Listing, the fourth step requires the Commissioner to determine whether the claimant has  
10 sufficient "residual functional capacity" to perform her past work; if so, the claimant is not disabled  
11 and the claim is denied. Id. The claimant has the burden of proving that she is unable to  
12 perform past relevant work. Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992). If the  
13 claimant meets this burden, a prima facie case of disability is established. Id. The  
14 Commissioner then bears the burden of establishing that the claimant is not disabled because  
15 there is other work existing in "significant numbers" in the national or regional economy the  
16 claimant can do, either (1) by the testimony of a VE, or (2) by reference to the Medical-  
17 Vocational Guidelines at 20 C.F.R. part 404, subpart P, appendix 2. Lounsbury, 468 F.3d at  
18 1114. The determination of this issue comprises the fifth and final step in the sequential  
19 analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester v. Chater, 81 F.3d 721, 828 n.5 (9th Cir.  
20 1995); Drouin, 966 F.2d at 1257.

## 21 22 **B. THE ALJ'S APPLICATION OF THE FIVE-STEP PROCESS**

23 At step one, the ALJ found that plaintiff has not engaged in substantial gainful activity since  
24 February 20, 2014, the application date. [AR at 27.] At step two, the ALJ concluded that plaintiff  
25 has the severe impairment of bipolar disorder. [Id.] She determined that plaintiff's medically  
26 determinable impairments of thoracic spine degenerative disc disease, hypertension, status post  
27 bilateral cataract surgery, and diabetes, are nonsevere. [AR at 27-28.] At step three, the ALJ  
28 determined that plaintiff does not have an impairment or a combination of impairments that meets

1 or medically equals any of the impairments in the Listing. [AR at 29.] The ALJ further found that  
2 plaintiff retained the residual functional capacity (“RFC”)<sup>2</sup> to perform a full range of work at all  
3 exertional levels as follows:

4 [She] is able to understand, remember, and carryout [sic] simple, routine work tasks;  
5 may have occasional interaction with coworkers and supervisors; and no interaction  
with the public.

6 [AR at 30.] At step four, based on plaintiff’s RFC and the testimony of the VE, the ALJ concluded  
7 that plaintiff has no past relevant work. [AR at 35.] At step five, based on plaintiff’s RFC,  
8 vocational factors, and the VE’s testimony, the ALJ found that there are jobs existing in significant  
9 numbers in the national economy that plaintiff can perform, including work as a “hand packager”  
10 (Dictionary of Occupational Titles (“DOT”) No. 920.587-018), as a “floor waxer” (DOT No.  
11 381.687-034), and as a “store laborer” (DOT No. 922.687-058). [AR at 36, 69.] Accordingly, the  
12 ALJ determined that plaintiff was not disabled at any time since February 20, 2014, the date the  
13 application was filed. [AR at 36.]

## 14 15 V.

### 16 THE ALJ’S DECISION

17 Plaintiff contends that (1) substantial evidence did not support the ALJ’s RFC  
18 determination; and (2) the ALJ erred when she rejected plaintiff’s subjective symptom testimony.  
19 [JS at 4.] As set forth below, the Court respectfully disagrees with plaintiff and affirms the decision  
20 of the ALJ.

#### 21 22 A. THE ALJ’S RFC DETERMINATION

23 The ALJ reviewed the medical evidence of record regarding plaintiff’s bipolar disorder, and  
24 found that it supported her RFC assessment. [AR at 33.] The ALJ’s summary of that evidence  
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26 <sup>2</sup> RFC is what a claimant can still do despite existing exertional and nonexertional  
27 limitations. See Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). “Between steps  
28 three and four of the five-step evaluation, the ALJ must proceed to an intermediate step in which  
the ALJ assesses the claimant’s residual functional capacity.” Massachi v. Astrue, 486 F.3d 1149,  
1151 n.2 (9th Cir. 2007) (citation omitted).

1 specifically mentioned records dated between February 4, 2013, and October 3, 2016, which  
2 reflected “no complaints of depression, sadness, hopelessness, helplessness, worthlessness,  
3 impaired concentration, or suicidal ideations.” [Id. (citing AR at 413).] According to the ALJ, these  
4 records also routinely reflected normal appearance, behavior, eye contact, speech, affect, mood,  
5 sleep, cognition, fund of knowledge, intellectual functioning, orientation, interaction style,  
6 cooperation, alertness, disposition, thoughts, and mood, among other things. [Id. (citing AR at  
7 298, 343, 349, 413, 414, 418, 486, 496, 539).] The ALJ also noted that when plaintiff “was  
8 compliant with medications, she had normal interaction style, orientation, speech, thought  
9 process, and perceptual processes.” [Id. (citing AR at 349).]

10 Plaintiff contends that the ALJ’s RFC determination was not supported by substantial  
11 evidence. [JS at 4.] She states that the ALJ “failed to properly consider the relevant medical  
12 evidence of record in this case supportive of Plaintiff’s claim of disability,” specifically plaintiff’s  
13 “severe chronic mental impairments, which have rendered her consistently incapable of persisting  
14 at any full time competitive employment at all times since 1986, when she was originally found  
15 disabled due to her mental impairments by this same Administration,” and “the variability and  
16 volatility in Plaintiff’s symptoms which render her unreliable at persisting at full time employment.”  
17 [JS at 4-5.] Plaintiff further notes that she “received those [previous] SSI benefits for  
18 approximately 27 years until her benefits were terminated for non-disability reasons in 2013, when  
19 she was incarcerated. Upon release in 2014, [plaintiff] reapplied for benefits, which is the current  
20 application being appealed, only to be found not disabled at the age of 55, with no past relevant  
21 work in the past 15 years.” [Id. (citations omitted).] In support of her position, plaintiff points out  
22 that on January 15, 2013, a few months after her incarceration began, plaintiff was found to be  
23 “delusional with the express belief that she was pregnant with twins”; a few days later, on January  
24 18, 2013, she “expressed suicidal ideations with thoughts of committing suicide by hanging  
25 herself,” and stated that she was “pregnant and hungry” and wanted to die, and “was found to be  
26 in need of protection from other prisoners as well as having suicide precautions”; on March 13,  
27 2013, she “was found to have an altered mental status”; on July 25, 2013, and October 17, 2013,  
28 she was diagnosed with a bipolar disorder and a global assessment of functioning (“GAF”) score

1 of 45; and on April 11, 2014, plaintiff's daughter reported to plaintiff's psychiatric therapist that  
2 plaintiff "can become very manic, being up for days ho[a]rding everything, and cleaning  
3 extensively without resting." [JS at 5-6 (citing AR at 299, 304, 342, 343, 344, 345, 365, 415).]

4 Defendant responds that although plaintiff "may have received benefits in 1986, . . .  
5 somewhere she lost the benefits and they were reinstated in 2004." [JS at 6.] According to  
6 defendant, plaintiff's records show that she was married in 1979 and that between 1979 and 1988  
7 she had six children, sometimes worked outside the home, and was divorced in 2003. [JS at 6-7  
8 & n.1.] Her benefits were terminated again in 2013 when she was incarcerated. [JS at 7 (citing  
9 20 C.F.R. §§ 416.1325(a), 416.1335).] Defendant notes that although plaintiff "faults the ALJ" for  
10 rejecting the opinions of the consultative psychiatric examining physician and the state agency  
11 review physicians, those physicians "essentially found *no* severe impairments." [*Id.* (emphasis  
12 added) (citing AR at 34, 77-78, 87-89, 403-07).] Indeed, the ALJ specifically stated that the  
13 opinions of these physicians were given little weight *because* they found no severe impairment  
14 and because they had "inadequately considered the objective medical evidence of record, which  
15 demonstrates that [plaintiff] had more than mild limitations," and that she had a history of  
16 treatment as well as a continued need for mental health treatment and psychotropic medications.  
17 [AR at 34.] Defendant also states that the ALJ properly found plaintiff had mild limitations in  
18 activities of daily living, and moderate difficulty in social functioning and maintaining concentration,  
19 persistence, and pace. [JS at 8 (citing AR at 29).] Defendant notes that the ALJ considered the  
20 few clinical findings and gave plaintiff "the benefit of the doubt and restricted her to simple routine  
21 tasks, with occasional interactions with co-workers, and no interaction with the public." [JS at 9  
22 (citing AR at 30).] Defendant concludes that the RFC determination "reasonably reflects" the  
23 medical evidence from the treatment notes and other record evidence, and that the totality of the  
24 record supports the ALJ's RFC determination, as there is nothing suggesting that she cannot  
25 perform simple routine tasks. [JS at 9-10 (citations omitted).]

26 A claimant's RFC is "the most" that a claimant can do despite her limitations. 20 C.F.R.  
27 § 416.945(a). It is "based on all the relevant medical and other evidence in [the] case record." *Id.*;  
28 see Batson v. Comm'r of the Soc. Sec. Admin., 359 F.3d 1190, 1197-98 (9th Cir. 2003). The ALJ

1 must consider the total limiting effects caused by medically determinable impairments and the  
2 claimant's subjective pain. Garrison, 759 F.3d at 1011 (citing 20 C.F.R. § 416.920(e)). The RFC  
3 need not parrot the opinion of a particular doctor, but rather, "the ALJ is responsible for translating  
4 and incorporating clinical findings into a succinct RFC." Rounds v. Comm'r Soc. Sec. Admin., 807  
5 F.3d 996, 1006 (9th Cir. 2015); see also Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1174 (9th  
6 Cir. 2008).

7 After reviewing the record, the Court agrees with defendant that the ALJ reasonably  
8 determined that the objective medical evidence does not reflect a more restricted RFC than  
9 determined by the ALJ and that sufficient evidence supported that determination, notwithstanding  
10 plaintiff's reliance on several mental health "incidents" that occurred in January and March 2013,  
11 a few months after she began her incarceration (and prior to the filing of her application for SSI).  
12 With respect to those "incidents," on January 15, 2013, plaintiff reported that she believed that she  
13 was pregnant with twins [AR at 342], and on January 18, 2013, she again stated she was  
14 pregnant with twins and referred to one of the correctional officers "as her 'baby's daddy.'" [AR  
15 at 343.] On January 18, 2013, she also told one of the officers that she had thought about  
16 hanging herself, but decided she did not want to, and later explained that "it was just a  
17 misunderstanding and she was just hungry," as she had either missed her breakfast or her lunch,  
18 which made her "mad." [AR at 343, 344.] Later that same day plaintiff was found lying in the  
19 prison yard after purportedly being "jumped" by other inmates. [AR at 345.] In contrast to  
20 plaintiff's suggestion that the institution found that plaintiff was in need of protection [see JS at 6  
21 ("[plaintiff] was found in need of protection from other prisoners")], it was plaintiff who told the  
22 correctional officers that "she needs protection from people in the yard." [id.] After these  
23 incidents, plaintiff was placed on a "five-day follow-up" as a precaution, and "[b]rief supportive  
24 therapy and empathic listening" were provided. [AR at 343.] It appears that plaintiff may have  
25 been moved to another unit after these incidents, her medication was changed, and she then  
26 participated regularly and appropriately in group sessions. [AR at 282-402, 412-17.] The final  
27 incident relied on by plaintiff as demonstrating an "altered mental status" [JS at 6], occurred on  
28 March 13, 2013: plaintiff was waiting in the custody line when she fainted and fell backwards.



1 [AR at 365.] The treatment notes resulting from the March 13, 2013, fainting incident speculated  
2 that the incident may have been due to a recent increase in plaintiff's Vistaril medication, and the  
3 dosage was reduced [AR at 366]; discharge records from the hospital after her fainting episode  
4 purportedly reflected that plaintiff was identified with hypothyroidism, pancreatitis, hypertension,  
5 syncope, and "having prolonged QT and QTC" (a heart rhythm condition that can cause rapid  
6 heartbeats and trigger a fainting spell (<https://www.mayoclinic.org> (last visited December 12,  
7 2018))).

8 Notwithstanding these few incidents early in plaintiff's incarceration, the rest of the prison  
9 psychiatric records reflect only positive observations and behaviors, including active participation  
10 in a number of counseling groups, clear and coherent speech and thought processes, no  
11 delusional signs, no signs or symptoms of psychosis, and plaintiff's regular reports that she was  
12 "good" or "doing real well," or other similar things. [AR at 32; see also, e.g., AR at 282-402.]  
13 Similarly, the mental health treatment records after plaintiff's release from incarceration in early  
14 2014 reflect that her appearance, behavior, eye contact, speech, affect, mood, thought processes,  
15 thought content, and cognitive abilities, among other things, all were within normal limits, and  
16 delusions or homicidal/suicidal ideations were denied or absent. [AR at 32-34; see also, e.g., AR  
17 at 412-551.] Plaintiff points to no affirmative evidence, and the Court has not found any such  
18 evidence in the record, demonstrating that plaintiff is unable to perform the requirements of the  
19 occupations determined by the ALJ to be consistent with her RFC determination. [AR at 35-36.]

20 The ALJ's RFC determination was based on substantial evidence of record and remand  
21 is not warranted on this issue.

## 22

### 23 **B. SUBJECTIVE SYMPTOM TESTIMONY**

#### 24 **1. Legal Standard**

25 Prior to the ALJ's assessment in this case, Social Security Ruling ("SSR")<sup>3</sup> 16-3p went into  
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27 <sup>3</sup> "SSRs do not have the force of law. However, because they represent the Commissioner's  
28 interpretation of the agency's regulations, we give them some deference. We will not defer to SSRs  
(continued...)

1 effect. See SSR 16-3p, 2017 WL 5180304 (Oct. 25, 2017).<sup>4</sup> SSR 16-3p supersedes SSR 96-7p,  
2 the previous policy governing the evaluation of subjective symptoms. SSR 16-3p, 2017 WL  
3 5180304, at \*2. SSR 16-3p indicates that “we are eliminating the use of the term ‘credibility’ from  
4 our sub-regulatory policy, as our regulations do not use this term.” Id. Moreover, “[i]n doing so,  
5 we clarify that subjective symptom evaluation is not an examination of an individual’s character[;]  
6 [i]nstead, we will more closely follow our regulatory language regarding symptom evaluation.” Id.;  
7 Trevizo, 871 F.3d at 678 n.5. Thus, the adjudicator “will not assess an individual’s overall  
8 character or truthfulness in the manner typically used during an adversarial court litigation. The  
9 focus of the evaluation of an individual’s symptoms should not be to determine whether he or she  
10 is a truthful person.” SSR 16-3p, 2017 WL 5180304, at \*11. The ALJ is instructed to “consider  
11 all of the evidence in an individual’s record,” “to determine how symptoms limit ability to perform  
12 work-related activities.” Id. at \*2. The Ninth Circuit also noted that SSR 16-3p “makes clear what  
13 our precedent already required: that assessments of an individual’s testimony by an ALJ are  
14 designed to ‘evaluate the intensity and persistence of symptoms after [the ALJ] find[s] that the  
15 individual has a medically determinable impairment(s) that could reasonably be expected to  
16 produce those symptoms,’ and ‘not to delve into wide-ranging scrutiny of the claimant’s character  
17 and apparent truthfulness.’” Trevizo, 871 F.3d at 678 n.5 (citing SSR 16-3p).

18 To determine the extent to which a claimant’s symptom testimony must be credited, the  
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20 <sup>3</sup>(...continued)

21 if they are inconsistent with the statute or regulations.” Holohan v. Massanari, 246 F.3d 1195, 1202  
22 n.1 (9th Cir. 2001) (citations omitted).

23 <sup>4</sup> SSR 16-3p, originally “effective” on March 28, 2016, was republished on October 25, 2017,  
24 with the revision indicating that SSR 16-3p was “applicable [rather than effective] on March 28,  
25 2016.” See 82 Fed. Reg. 49462, 49468 & n.27, 2017 WL 4790249, 4790249 (Oct. 25, 2017);  
26 SSR 16-3p, 2017 WL 5180304 (Oct. 25, 2017). Other than also updating “citations to reflect  
27 [other] revised regulations that became effective on March 27, 2017,” the Administration stated  
28 that SSR 16-3p “is otherwise unchanged, and provides guidance about how we evaluate  
statements regarding the intensity, persistence, and limiting effects of symptoms in disability  
claims . . . .” Id. The Ninth Circuit recently noted that SSR 16-3p is consistent with its prior  
precedent. Trevizo v. Berryhill, 871 F.3d 664, 678 n.5 (9th Cir. 2017) (SSR 16-3p “makes clear  
what [Ninth Circuit] precedent already required”). Thus, while SSR 16-3p eliminated the use of  
the term “credibility,” case law using that term is still instructive in the Court’s analysis.

1 Ninth Circuit has “established a two-step analysis.” Trevizo, 871 F.3d at 678 (citing Garrison, 759  
2 F.3d at 1014-15). “First, the ALJ must determine whether the claimant has presented objective  
3 medical evidence of an underlying impairment which could reasonably be expected to produce  
4 the pain or other symptoms alleged.” Id. (quoting Garrison, 759 F.3d at 1014-15); Treichler v.  
5 Comm’r of Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting Lingenfelter v. Astrue,  
6 504 F.3d 1028, 1036 (9th Cir. 2007)) (internal quotation marks omitted). If the claimant meets the  
7 first test, and the ALJ does not make a “finding of malingering based on affirmative evidence  
8 thereof” (Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006)), the ALJ must “evaluate  
9 the intensity and persistence of [the] individual’s symptoms . . . and determine the extent to which  
10 [those] symptoms limit [her] . . . ability to perform work-related activities . . . .” SSR 16-3p, 2017  
11 WL 5180304, at \*4. In assessing the intensity and persistence of symptoms, the ALJ must  
12 consider a claimant’s daily activities; the location, duration, frequency, and intensity of the pain  
13 or other symptoms; precipitating and aggravating factors; the type, dosage, effectiveness and side  
14 effects of medication taken to alleviate pain or other symptoms; treatment, other than medication  
15 received for relief of pain or other symptoms; any other measures used to relieve pain or other  
16 symptoms; and other factors concerning a claimant’s functional limitations and restrictions due  
17 to pain or other symptoms. 20 C.F.R. § 416.929; see also Smolen v. Chater, 80 F.3d 1273, 1283-  
18 84 & n.8; SSR 16-3p, 2017 WL 5180304, at \*4 (“[The Commissioner] examine[s] the entire case  
19 record, including the objective medical evidence; an individual’s statements . . . ; statements and  
20 other information provided by medical sources and other persons; and any other relevant  
21 evidence in the individual’s case record.”).

22 Where, as here, plaintiff has presented evidence of an underlying impairment, and the ALJ  
23 did not make a finding of malingering, the ALJ’s reasons for rejecting a claimant’s subjective  
24 symptom statements must be specific, clear and convincing. Brown-Hunter v. Colvin, 806 F.3d  
25 487, 488-89 (9th Cir. 2015); Burrell v. Colvin, 775 F.3d 1133, 1136 (9th Cir. 2014) (citing Molina  
26 v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012)); Trevizo, 871 F.3d at 678 (citing Garrison, 759  
27 F.3d at 1014-15); Treichler, 775 F.3d at 1102. “General findings [regarding a claimant’s credibility]  
28 are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence

1 undermines the claimant's complaints." Burrell, 775 F.3d at 1138 (quoting Lester, 81 F.3d at 834)  
2 (quotation marks omitted). The ALJ's findings "'must be sufficiently specific to allow a reviewing  
3 court to conclude the adjudicator rejected the claimant's testimony on permissible grounds and  
4 did not arbitrarily discredit a claimant's testimony regarding pain.'" Brown-Hunter, 806 F.3d at 493  
5 (quoting Bunnell v. Sullivan, 947 F.2d 341, 345-46 (9th Cir. 1991) (en banc)). A "reviewing court  
6 should not be forced to speculate as to the grounds for an adjudicator's rejection of a claimant's  
7 allegations of disabling pain." Bunnell, 947 F.2d at 346. As such, an "implicit" finding that a  
8 plaintiff's testimony is not credible is insufficient. Albalos v. Sullivan, 907 F.2d 871, 874 (9th Cir.  
9 1990) (per curiam).

10 In determining whether an individual's symptoms will reduce her corresponding capacities  
11 to perform work-related activities or abilities to function independently, appropriately, and  
12 effectively in an age-appropriate manner, the ALJ "will consider the consistency of the individual's  
13 own statements." SSR 16-3p, 2017 WL 5180304, at \*8-9; see also Ghanim v. Colvin, 763 F.3d  
14 1154, 1163-64 (9th Cir. 2014). In doing so, the ALJ "will compare statements an individual makes  
15 in connection with the individual's claim for disability benefits with any existing statements the  
16 individual made under other circumstances." Id. "If an individual's various statements about the  
17 intensity, persistence, and limiting effects of symptoms are consistent with one another and  
18 consistent with the objective medical evidence and other evidence in the record," the ALJ will  
19 determine that an individual's symptoms are more likely to reduce her capacities for work-related  
20 activities or reduce the abilities to function independently, appropriately, and effectively in an  
21 age-appropriate manner. Id. at \*9. The ALJ will recognize, however, that inconsistencies in an  
22 individual's statements made at varying times "does not necessarily mean they are inaccurate,"  
23 as symptoms may vary in their intensity, persistence, and functional effects, or may worsen or  
24 improve with time. Id.

## 25 26 **2. The Parties' Contentions**

27 Plaintiff contends the ALJ failed to articulate legally sufficient reasons for discounting  
28 plaintiff's subjective symptom testimony. [JS at 11.] She submits that her "subjective statements

1 throughout this lengthy claims process in combination with her testimony under oath at the  
2 hearing in this matter are completely consistent, with not only her other statements of record but  
3 also the treating psychiatric records." [Id.] She states that she has consistently maintained that  
4 while she may be capable of engaging in certain minimal activities of daily living, she has also  
5 consistently maintained "that she is not capable of persisting at those activities in many instances  
6 through to completion and certainly not as would be required by any full time competitive  
7 employment." [JS at 11-12 (citing AR at 49-67, 219, 220, 242-50, 254, 263, 264).] Plaintiff argues  
8 that the ALJ did not clearly specify which statements plaintiff made that were not "sufficiently  
9 credible." [JS at 12 (internal quotation marks omitted).] She again suggests "that it is not  
10 reasonable nor rational to expect a 58 year old female with no past relevant work history, who was  
11 on disability for 27 of the 30 years leading up [to] the ALJ decision, and who has severe mental  
12 impairments to all of a sudden be capable of jumping into the competitive labor market and  
13 perform the medium occupations" suggested by the ALJ. [JS at 13.] She states that the  
14 Administration failed to consider the "obvious evidence which exists in this case and which does  
15 not appear to be part of this Administrative Record which would document the reasons why she  
16 was awarded SSI benefits for her mental impairments in 1986, and undoubtedly numerous  
17 continuing disability reviews which were rendered between 1986 until her benefits were ultimately  
18 terminated for non-disability reasons in 2013." [Id.] She states that the "logical interpretation of  
19 the ALJ's evaluation of all of these facts is that Plaintiff's incarceration from 2013 to 2014  
20 apparently cured her mental impairments which had otherwise previously been found disabling  
21 over a 27 year period of time," which is "neither reasonable nor rational." [Id.]

22 Defendant responds that the ALJ properly found that the objective clinical findings reflect  
23 plaintiff's mental functioning as normal; that plaintiff at times failed to comply with treatment; that  
24 when plaintiff is compliant with her medication, her symptoms are well-controlled; that plaintiff's  
25 claims of poor concentration were contradicted by the record which showed plaintiff's mental  
26 status examinations within normal limits; and that plaintiff's admitted activities of daily living were  
27 inconsistent with her subjective symptom testimony. [JS at 15-16.] Defendant states that the  
28 ALJ, therefore, "looked at the evidence in the record and considered factors recognized by the

1 Ninth Circuit for evaluating subjective complaints,” and her rationale was sufficiently specific “to  
2 allow a reviewing court to conclude [she] rejected these complaints on permissible grounds and  
3 did not arbitrarily discredit [plaintiff’s] symptoms.” [JS at 17-18.]  
4

### 5 **3. Analysis**

6 In discounting plaintiff’s testimony, the ALJ found the following: (1) the record was “replete  
7 with examples of [plaintiff’s] improved condition” since the application date, and reflected “normal  
8 alertness, orientation, perceptual processes, speech, dress, thought content, affect, focus, insight,  
9 judgment, mood, no manic symptoms, and normal mental status examinations,” among other  
10 things; (2) although plaintiff reported difficulty being around others, there was insufficient evidence  
11 in the record to establish that plaintiff was “highly antagonistic, uncooperative, hostile, or acted  
12 in a socially unacceptable manner”; (3) although plaintiff alleged she had difficulty focusing and  
13 concentrating, her mental status examinations indicated that she had “normal thought content,  
14 focus, insight, judgment, mood, concentration, abstract thinking, and fund of knowledge”; (4)  
15 plaintiff’s activities of daily living were inconsistent with her testimony, some of the “physical and  
16 mental abilities and social interactions required in order to perform these activities are the same  
17 as those necessary for obtaining and maintaining employment,” and there was insufficient  
18 evidence to establish that plaintiff had serious difficulties performing her daily activities “without  
19 direct supervision, in a suitable manner, or on a consistent basis”; and (5) other information in the  
20 case record was inconsistent with plaintiff’s testimony, including (a) statements in plaintiff’s  
21 function report that did *not* reflect needing assistance with personal care tasks or that she had  
22 problems with being around others, (b) plaintiff’s reports of no mental health complaints at her  
23 treatment visits and stating, for example, that “things for her are real good,” and (c) medical  
24 records since plaintiff’s release from prison reflecting that plaintiff has not been psychiatrically  
25 hospitalized and has had few changes to her medications. [AR at 31-34.] The ALJ also noted  
26 that plaintiff’s failure to follow prescribed treatment that might improve her symptoms is  
27 inconsistent with her statements, and when she was compliant with her medication, “she had  
28 normal interaction style, orientation, speech, thought process, and perceptual processes.” [AR

1 at 33.]

2  
3 **a. Objective Medical Evidence**

4 The ALJ generally found that plaintiff's "allegations concerning the intensity, persistence  
5 and limiting effects of her symptoms" were only "partially supported" by the medical record. [Id.]  
6 She specifically mentioned plaintiff's testimony that her symptoms had persisted and continued  
7 since the application date, and contrasted that testimony with the medical evidence reflecting that  
8 plaintiff's condition had improved since that date. [AR at 32.] The ALJ also noted that plaintiff's  
9 testimony about the intensity, persistence, and limiting effects of her symptoms was inconsistent  
10 with the medical evidence reflecting normal thought processes, normal mental status  
11 examinations, and no manic symptoms, as well as with plaintiff's statements to her treating  
12 providers that she was doing well, and had no complaints, among other things. [AR at 32-33.]  
13 Additionally, although plaintiff alleged she had difficulty focusing and concentrating, the ALJ noted  
14 that her mental status examinations indicate that she had "normal thought content, focus, insight,  
15 judgment, mood, concentration, abstract thinking, and fund of knowledge." [AR at 33.] She also  
16 observed that although plaintiff alleged she had difficulty interacting with others, there was  
17 insufficient evidence to establish that plaintiff was "highly antagonistic, uncooperative, hostile, or  
18 acted in a socially unacceptable manner." [AR at 29.]

19 While a lack of objective medical evidence supporting a plaintiff's subjective complaints  
20 cannot provide the only basis to reject a claimant's subjective symptom testimony (Trevizo, 871  
21 F.3d at 679 (quoting Robbins, 466 F.3d at 883)), it is one factor that an ALJ can consider in  
22 evaluating symptom testimony. See Burch, 400 F.3d at 681 ("Although lack of medical evidence  
23 cannot form the sole basis for discounting pain testimony, it is a factor the ALJ must consider in  
24 his credibility analysis."); SSR 16-3p, 2017 WL 5180304, at \*5 ("objective medical evidence is a  
25 useful indicator to help make reasonable conclusions about the intensity and persistence of  
26 symptoms, including the effects those symptoms may have on the ability to perform work-related  
27 activities for an adult"). "The intensity, persistence, and limiting effects of many symptoms can  
28 be clinically observed and recorded in the medical evidence. . . . These findings may be

1 consistent with an individual's statements about symptoms and their functional effects. However,  
2 when the results of tests are not consistent with other evidence in the record, they may be less  
3 supportive of an individual's statements about pain or other symptoms than test results and  
4 statements that are consistent with other evidence in the record." SSR 16-3p, 2017 WL 5180304,  
5 at \*5. As the Ninth Circuit recently held, "an ALJ's 'vague allegation' that a claimant's testimony  
6 is 'not consistent with the objective medical evidence,' without any 'specific finding in support' of  
7 that conclusion, is insufficient." Treichler, 775 F.3d at 1103 (citation omitted); see Laborin v.  
8 Berryhill, 867 F.3d 1151, 1153 (9th Cir. 2017) (ALJ's statement that plaintiff's testimony regarding  
9 the intensity, persistence, and limiting effects of his symptoms was not credible to the extent his  
10 testimony is "inconsistent with the above residual functional capacity assessment" is an  
11 insufficient basis for discrediting testimony).

12 Here, a review of plaintiff's mental health treatment records reflects that but for the few  
13 "incidents" in early 2013 relied on by plaintiff in the Joint Submission, all of which occurred a few  
14 months after her incarceration began (and prior to her application date) and are described above  
15 in the discussion regarding plaintiff's first issue, plaintiff's mental status examinations and  
16 treatment records both in prison and after her release have showed little to no symptoms or  
17 complaints related to her bipolar disorder, including no evidence of hostility, socially unacceptable  
18 behavior, or antagonistic and uncooperative behavior. In fact, plaintiff's treatment records,  
19 including her mental status examinations, routinely reflect -- as specifically found by the ALJ -- that  
20 plaintiff presented with a normal interaction style, speech, thought content, appearance, eye  
21 contact, mood, judgment, concentration, memory, orientation, affect, behavior, and disposition.  
22 [AR at 33 (citations omitted).] Also as noted by the ALJ, plaintiff's medical records on June 25,  
23 2014, reflected that plaintiff was "clinically stable," and had normal insight, judgment, and impulse  
24 control. [Id. (citing AR at 414).] SSR 16-3p and relevant case law do not require that an ALJ  
25 simply ignore inconsistencies between objective medical evidence and a claimant's testimony.  
26 Accordingly, it was reasonable for the ALJ to find that plaintiff's subjective symptom statements  
27 were not consistent with and/or supported by the objective medical evidence of record.

28 Based on the foregoing, the Court finds that this was a specific, clear and convincing



1 reason for discounting plaintiff's subjective symptom testimony. However, because this cannot  
2 be the sole legally sufficient reason for discounting plaintiff's subjective symptom testimony, the  
3 ALJ's determination to discount that testimony rises or falls with her other grounds for discrediting  
4 plaintiff's testimony.

5  
6 **b. Daily Activities**

7 The ALJ also found that plaintiff's activities of daily living as stated in her Adult Function  
8 Report [AR at 242-50], such as performing personal care tasks, preparing meals, cleaning, doing  
9 laundry, ironing, shopping in stores, handling money, attending church, walking, and reading, were  
10 inconsistent with her statements concerning the alleged intensity, persistence, and limiting effects  
11 of her symptoms as testified to at the hearing. [AR at 31-32.] She also determined that "[s]ome  
12 of the physical and mental abilities and social interactions required in order to perform these  
13 activities are the same as those necessary for obtaining and maintaining employment." [Id.]

14 An ALJ may discredit testimony when a claimant reports participation in everyday activities  
15 indicating capacities that are transferable to a work setting. Molina, 674 F.3d at 1113. However,  
16 "[e]ven where those activities suggest some difficulty functioning, they may be grounds for  
17 discrediting the claimant's testimony to the extent that they contradict claims of a totally  
18 debilitating impairment." Id. (citing Turner v. Comm'r of Soc. Sec., 613 F.3d 1217, 1225 (9th Cir.  
19 2010); Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d 685, 693 (9th Cir. 2009)). "Engaging in  
20 daily activities that are incompatible with the severity of symptoms alleged can support an adverse  
21 credibility determination." Trevizo, 871 F.3d at 682 (citing Ghanim v. Colvin, 763 F.3d 1154, 1165  
22 (9th Cir. 2014)).

23 Plaintiff contends that while she is capable of engaging in activities of daily living, her  
24 participation was "minimal," and she has consistently maintained "that she is not capable of  
25 persisting at those activities in many instances through to completion and certainly not as would  
26 be required by any full time competitive employment." [JS at 11-12.]

27 Here, although the ALJ specifically identified a few of the daily activities engaged in by  
28 plaintiff and found that they demonstrated that plaintiff was able to perform work within the RFC

1 determination [AR at 31-32], the amount of involvement plaintiff described in some of these  
2 activities in her hearing testimony was minimal. For instance, she testified that she worked in the  
3 prison kitchen serving food, but she did not work every day at that job [AR at 56]; she forgets to  
4 complete laundry tasks [AR at 59]; she walks for only ten minutes in the morning [id.]; plaintiff's  
5 daughter makes her lunch because plaintiff has left the water boiling on the stove in the past [AR  
6 at 59-60]; and she has days when she has difficulty doing things around the house and performing  
7 her personal care activities. [AR at 65.] However, as noted by the ALJ, in plaintiff's Adult Function  
8 Report -- and inconsistent with her testimony -- plaintiff stated that she does 3 hours of cleaning  
9 daily, 2 hours of laundry weekly, 20 minutes of ironing daily, cooks complete meals with several  
10 courses every day (taking between 1-2 hours to do so), goes shopping and out to eat daily, and  
11 goes to church weekly. [AR at 243-47.] Accordingly, the ALJ's finding that plaintiff's hearing  
12 testimony regarding the limiting effects of her symptoms was inconsistent with her activities as  
13 described in her Adult Function Report was a specific, clear and convincing reason for discounting  
14 plaintiff's subjective symptom testimony.

15 However, the ALJ did not explain how plaintiff's daily activities are transferable to a work  
16 setting. "[I]f a claimant is able to spend a substantial part of his day engaged in pursuits involving  
17 the performance of physical functions that *are* transferable to a work setting, a specific finding as  
18 to this fact may be sufficient to discredit an allegation of disabling excess pain." Fair v. Bowen,  
19 885 F.2d 597, 603 (9th Cir. 1989) (emphasis in original). An ALJ "must make specific findings  
20 relating to the daily activities and their transferability to conclude that a claimant's daily activities  
21 warrant an adverse credibility determination." Orn v. Astrue, 495 F.3d 625, 639 (9th Cir. 2007)  
22 (citation and alteration omitted). Here, the ALJ neither made specific findings nor pointed to any  
23 record evidence to support her conclusion that plaintiff's daily activities were "transferable" to a  
24 work setting. See id.

25 Accordingly, the ALJ's finding that plaintiff's daily activities are transferable to a work setting  
26 was not a specific, clear and convincing reason for discounting plaintiff's subjective symptom  
27 testimony.

1                   **c.      Inconsistency With Other Evidence**

2           The ALJ also discounted plaintiff's statements as "inconsistent with other evidence in the  
3 record." [AR at 32.] She specifically noted that although plaintiff testified she had difficulty  
4 performing personal care tasks and needed her daughter's assistance to wash her hair, plaintiff  
5 did not note this problem in her function report, and her daughter also stated that plaintiff could  
6 perform personal care tasks without problem. [AR at 32 (citations omitted).] The ALJ further  
7 observed that although plaintiff testified she had difficulty being around others, she was able to  
8 attend church and shop in stores. [Id. (citations omitted).] Although plaintiff testified that she had  
9 significant bipolar symptoms, the ALJ pointed out that on several occasions plaintiff stated that  
10 she had no mental health complaints. [Id. (citations omitted).] And, although plaintiff stated she  
11 was depressed and had constant bipolar symptoms, she also reported to her treating providers  
12 that "things for her are real good," she attended church regularly, she had no manic symptoms,  
13 and the findings from her mental status examinations were normal. [Id. (citations omitted)  
14 (internal quotation marks omitted).] Finally, since her release from prison, the ALJ noted that  
15 plaintiff has not been psychiatrically hospitalized and has had few changes to her medications.  
16 [Id.]

17           "Other evidence" may include the claimant's daily activities, medications, other measures  
18 used to alleviate symptoms, and any other factors the ALJ deems relevant. See 20 C.F.R. §§  
19 416.929(c)(3)(i)-(vii). Each of the reasons given by the ALJ for discounting plaintiff's testimony  
20 based on "other evidence," were clear and convincing and supported by substantial evidence.

21  
22                   **d.      Failure to Comply With Treatment**

23           The ALJ found that plaintiff's failure to follow prescribed treatment that might improve her  
24 symptoms was inconsistent with her statements, and when plaintiff was compliant with her  
25 medication "she had normal interaction style, orientation, speech, thought process, and perceptual  
26 processes." [AR at 33.]

27           "A claimant's subjective symptom testimony may be undermined by an 'unexplained, or  
28 inadequately explained, failure to . . . follow a prescribed course of treatment.'" Trevizo, 871 F.3d

1 at 679 (quoting Fair, 885 F.2d at 603); see also SSR 16-3p, 2017 WL 5180304, at \*9 (failure to  
2 follow treatment may result in an ALJ finding that the alleged intensity and persistence of  
3 symptoms are inconsistent with the overall record, but only after considering possible reasons the  
4 claimant may not comply with or seek treatment consistent with the degree of her complaints).  
5 Failure to assert a reason for not following treatment “can cast doubt on the sincerity of the  
6 claimant’s pain testimony.” Trevizo, 871 F.3d at 679 (quoting Fair, 885 F.2d at 603) (internal  
7 quotation marks omitted). In Trevizo, the court found that the ALJ did not provide clear and  
8 convincing reasons for rejecting a plaintiff’s credibility when relying on two instances of the  
9 claimant failing to take her medication as a reason to discount her testimony. First, Trevizo was  
10 prescribed narcotics for pain but did not take them because of a fear of becoming addicted.  
11 Trevizo, 871 F.3d at 679-80. Second, she was noncompliant with taking her diabetes medication  
12 because she feared that the medication was causing severe rashes. Id. at 680. Trevizo also  
13 indicated that there were periods in which she could not afford her diabetes medication. Id. at  
14 680-81. The court held that Trevizo provided adequate explanations in both instances. Id. at 681.  
15 Therefore, the claimant’s noncompliance was not “clear and convincing” evidence for rejecting her  
16 testimony. Id. at 682.

17 Here, the ALJ pointed to two treatment records reflecting that plaintiff had refused her  
18 medications. [AR at 33 (citing AR at 360, 417).] However, as in Trevizo, these two notes do not  
19 provide clear and convincing reasons for rejecting plaintiff’s testimony. The first note, dated  
20 March 8, 2013, reflected that plaintiff stated she had stopped her medications “because she is not  
21 resting well.” [AR at 360.] Based on plaintiff’s complaint, the psychiatrist increased her Vistaril.  
22 [AR at 361.] The second note, dated March 14, 2014, was merely relaying the incident that  
23 resulted in plaintiff’s arrest (and predated her incarceration and application dates): she “was  
24 apparent[ly] in a heightened manic episode and had not been taking psychotropic medication for  
25 previously diagnosed Bipolar Disorder.” [AR at 417.] Accordingly, these two notes do not  
26 constitute a clear and convincing reason to discount plaintiff’s subjective symptom testimony.

27 However, the ALJ’s finding that when plaintiff was compliant with her medication, “she had  
28 normal interaction style, orientation, speech, thought process, and perceptual processes” is clearly

1 supported by the record, which reflects, as the ALJ noted, no complaints of depression, sadness,  
2 hopelessness, helplessness, worthlessness, impaired concentration, or suicidal ideation; and the  
3 record also reflects normal speech, thought content, perceptual processes, eye contact, memory,  
4 interaction style, affect, mood, cognition, fund of knowledge, intellectual functioning,  
5 concentration, memory, orientation, judgment, and insight, among other things. [AR at 33.]  
6 Impairments that can be effectively controlled with medication are not disabling for purpose of  
7 determining eligibility for SSI benefits. Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001,  
8 1006 (9th Cir. 2006) (citations omitted); see also Peteresen v. Berryhill, 737 F. App'x 329, 332 (9th  
9 Cir. June 19, 2018) (citing Warre and finding ALJ properly relied on evidence that the claimant's  
10 pain and symptoms were controlled with medication and treatment).

11 Accordingly, the ALJ's finding that when plaintiff is compliant with her medications her  
12 symptoms are controlled was a clear and convincing reason to discount plaintiff's subjective  
13 symptom testimony.

#### 14 **4. Conclusion**

15 Based on the foregoing, in addition to her legally sufficient finding that plaintiff's subjective  
16 symptom testimony was not supported by the objective medical evidence, the ALJ provided other  
17 clear and convincing reasons for discounting plaintiff's subjective symptom testimony that also  
18 were "sufficiently specific" to allow this Court to conclude that the ALJ discounted plaintiff's  
19 testimony on permissible grounds and did not arbitrarily discredit her testimony regarding the  
20 intensity, persistence, and limiting effects of her bipolar symptoms. Brown-Hunter, 806 F.3d at  
21 493 (quoting Bunnell, 947 F.2d at 345-46). Remand is not warranted on this issue.  
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VI.

CONCLUSION

IT IS HEREBY ORDERED that: (1) plaintiff's request for remand is **denied**; and (2) the decision of the Commissioner is **affirmed**.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment herein on all parties or their counsel.

This Memorandum Opinion and Order is not intended for publication, nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

DATED: December 18, 2018

  
\_\_\_\_\_  
PAUL L. ABRAMS  
UNITED STATES MAGISTRATE JUDGE