

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

SHAUNTAYE M. G.,	)	NO. ED CV 20-55-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
ANDREW SAUL, Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	
	)	

---

**PROCEEDINGS**

Plaintiff filed a complaint on January 8, 2020, seeking review of the Commissioner's denial of benefits. On February 4, 2020, the parties consented to proceed before a United States Magistrate Judge. Plaintiff filed a motion for summary judgment on May 27, 2020. Defendant filed a motion for summary judgment on August 3, 2020. The Court has taken the motions under submission without oral argument. See L.R. 7-15; "Order," filed January 13, 2020.

///  
///

1 **BACKGROUND**

2  
3 On April 26, 2016, Plaintiff filed applications for Supplemental  
4 Security Income and Disability Insurance Benefits, asserting  
5 disability since May 5, 2013, based on alleged bipolar  
6 disorder/depression, brain lesions, degenerative joint disease in the  
7 back, scoliosis, anxiety and gastric problems (Administrative Record  
8 ("A.R.") 18, 196-203, 212).

9  
10 An Administrative Law Judge ("ALJ") examined the record and heard  
11 testimony from Plaintiff and a vocational expert (A.R. 18-66). The  
12 ALJ found that Plaintiff has "severe" impairments (i.e., bipolar  
13 disorder, anxiety disorder and mild degenerative disc disease of the  
14 lumbar spine) (A.R. 20). The ALJ also found that Plaintiff has a  
15 residual functional capacity to perform light work, limited to: (1)  
16 simple routine tasks; (2) no jobs at a production rate pace, such as  
17 an assembly line; (3) simple work-related decisions; (4) few changes  
18 in the work place; and (5) occasional contact with supervisors and  
19 coworkers, and no direct contact with the public (A.R. 22-30). The  
20 ALJ determined that there are light work jobs existing in significant  
21 numbers which Plaintiff can perform. See A.R. 30-31 (adopting  
22 vocational expert testimony at A.R. 62-63). Accordingly, the ALJ  
23 denied benefits (A.R. 31).

24  
25 The Appeals Council considered additional vocational evidence  
26 submitted by Plaintiff (see A.R. 308-22). However, the Appeals  
27 Council denied review (A.R. 1-6).

28 ///



1 must consider when reviewing the Commissioner's final decision for  
2 substantial evidence." Brewes v. Commissioner, 682 F.3d at 1163.  
3 "[A]s a practical matter, the final decision of the Commissioner  
4 includes the Appeals Council's denial of review, and the additional  
5 evidence considered by that body is evidence upon which the findings  
6 and decision complained of are based." Id. (citations and quotations  
7 omitted).<sup>1</sup> Thus, this Court has reviewed the evidence submitted for  
8 the first time to the Appeals Council.

### 9 10 **DISCUSSION**

11  
12 Plaintiff takes issue with the ALJ's evaluation of Plaintiff's  
13 mental impairments and with the ALJ's vocational findings.  
14 Specifically, Plaintiff argues that the ALJ erred in: (1) evaluating  
15 the opinions of treating psychiatrist Dr. Michael Chang, psychiatric  
16 consultative examiner Dr. Khushro Unwalla and the state agency  
17 physicians; and (2) relying on the vocational expert's testimony that  
18 the jobs performable by a person having Plaintiff's limitations exist  
19 in significant numbers. See Plaintiff's Motion, pp. 9-14; see also

---

20  
21 <sup>1</sup> And yet, the Ninth Circuit sometimes had stated that  
22 there exists "no jurisdiction to review the Appeals Council's  
23 decision denying [the claimant's] request for review." See,  
24 e.g., Taylor v. Commissioner, 659 F.3d 1228, 1233 (9th Cir.  
25 2011); but see Smith v. Berryhill, 139 S. Ct. 1765 (2019) (court  
26 has jurisdiction to review Appeals Council's dismissal of request  
27 for review as untimely); see also Luther v. Berryhill, 891 F.3d  
28 872, 875-76 (9th Cir. 2018) (refusing to consider the reasoning  
expressed by the Appeals Council in denying review where no  
additional evidence had been made a part of the administrative  
record); Warner v. Astrue, 859 F. Supp. 2d 1107, 1115 n.10 (C.D.  
Cal. 2012) (remarking on the seeming irony of reviewing an ALJ's  
decision in the light of evidence the ALJ never saw).

1 A.R. 308-21.

2  
3 After consideration of the record as a whole, Defendant's motion  
4 is granted and Plaintiff's motion is denied. The Administration's  
5 findings are supported by substantial evidence and are free from  
6 material<sup>2</sup> legal error. Plaintiff's contrary arguments are unavailing.

7  
8 **I. Summary of the Relevant Medical Record**<sup>3</sup>

9  
10 Although Plaintiff alleges a disability onset date of May 5,  
11 2013, the record contains no treatment documents concerning mental  
12 problems before 2015. See A.R. 350-52. In February of 2015,  
13 Plaintiff first reported depression and anxiety to a pain management  
14 doctor who prescribed Cymbalta to help with pain and depression.  
15 See A.R. 371, 377, 382 (describing Plaintiff's depression and anxiety  
16 as being due to her pain). Although Plaintiff also reported  
17 depression and anxiety at subsequent pain management visits in 2015  
18 and 2016, after her insurance had failed to cover Cymbalta, her pain  
19 management doctor provided no specific treatment for depression or  
20 anxiety (A.R. 385, 391, 396-97, 405, 410-11). Depression is not  
21 mentioned in primary care records during this time period (A.R. 350-  
22 70, 441-75). However, when Plaintiff applied for disability benefits

23  
24 \_\_\_\_\_  
25 <sup>2</sup> The harmless error rule applies to the review of  
26 administrative decisions regarding disability. See Garcia v.  
Commissioner, 768 F.3d 925, 932-33 (9th Cir. 2014); McLeod v.  
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011).

27 <sup>3</sup> Since Plaintiff does not take specific issue with the  
28 ALJ's evaluation of Plaintiff's physical impairments, the Court  
has not detailed the record of treatment for those impairments.

1 in April of 2016, she reported suffering from depression, anxiety and  
2 "bipolar" (A.R. 212).

3  
4 Consultative examiner Dr. Khushro Unwalla prepared a Complete  
5 Psychiatric Evaluation for Plaintiff dated July 29, 2016 (A.R. 345-  
6 49). Plaintiff reportedly was very irritable, had started fighting  
7 with her mother in the waiting room and had been abrupt and irritable  
8 with staff (A.R. 345). Plaintiff reportedly was angry, impulsive, and  
9 rude and appeared to have severe psychomotor agitation with abrupt  
10 speech (A.R. 345). During her evaluation, however, Plaintiff  
11 reportedly was engaged and cooperative (A.R. 345). Plaintiff  
12 complained of severe psychomotor agitation, irritability, hostility,  
13 mood swings and anxiety, reporting that the entire way to the  
14 appointment she had felt like she was going to die in a car crash  
15 (A.R. 345). During the evaluation, Plaintiff reportedly was labile,  
16 on edge and agitated (A.R. 345). Plaintiff claimed she was taking  
17 Xanax and yet she was not seeing a psychiatrist (A.R. 345-46).

18  
19 Plaintiff asserted a history of mental illness since the age of  
20 12, treatment including a psychiatric hospitalization when she was 14  
21 years old, a history of arrests and jailings as a minor, and a  
22 diagnosis of bipolar disorder for which she had been prescribed  
23 medications including Effexor, Lithium and Mellaril (A.R. 346). She  
24 reported a history of cutting herself, paranoia, auditory and visual  
25 hallucinations, impulse control problems, violent and chaotic  
26 behavior, losing custody of her children, homelessness and an  
27 inability to get along with others (A.R. 346). Yet, Plaintiff had a  
28 history of adequate self-care skills and was able to do limited

1 errands, shop, cook, drive and play video games (A.R. 347).

2  
3 On mental status examination, Plaintiff reportedly was  
4 cooperative and maintained good eye contact (A.R. 347). Her mood was  
5 labile and irritable, and she reportedly had abrupt/loud speech,  
6 reactive affect, disorganized thought process, paranoid ideation,  
7 psychotic anxiety, and visual hallucinations (A.R. 347). Plaintiff  
8 related that she felt as if she would die in a car crash, felt people  
9 were looking at her, and would "flare up" at anyone who states, "That  
10 is not true" (A.R. 347). Plaintiff reportedly registered one out of  
11 three items at five minutes, was unable to do serial sevens and serial  
12 threes and was unable to spell "house" backward (A.R. 347-48).  
13 According to her presentation, Plaintiff's abstract thinking was  
14 impaired and her insight and judgment were poor (A.R. 347-48).  
15 Compare A.R. 377, 381, 391, 395, 405, 409 (February, 2015, July, 2015  
16 and September, 2016 reports reflecting that Plaintiff's judgment and  
17 insight, recent and remote memory, mood and affect were all normal  
18 despite Plaintiff's allegations of depression and anxiety).

19  
20 Dr. Unwalla diagnosed bipolar disorder (not otherwise specified)  
21 and anxiety disorder (not otherwise specified), with a note to rule  
22 out schizoaffective disorder (A.R. 348). Dr. Unwalla assessed a  
23 current Global Assessment of Functioning ("GAF") score of 47 (A.R.

24 ///

25 ///

26 ///

27 ///

28 ///

1 348).<sup>4</sup> Dr. Unwalla opined that Plaintiff would have moderate  
2 difficulty with concentration, persistence and pace, maintaining  
3 social functioning and focusing and maintaining attention (A.R. 348).  
4 Dr. Unwalla further opined that Plaintiff's level of personal  
5 independence was poor, and she was "intellectually and psychologically  
6 incapable of performing activities of daily living" (A.R. 348). Dr.  
7 Unwalla opined that Plaintiff would have moderate limitations  
8 performing simple and repetitive tasks, detailed and complex tasks,  
9 performing work activities on a consistent basis without special or  
10 additional supervision, completing a normal workday or workweek,  
11 accepting instructions from supervisors, interacting with coworkers  
12 and with the public, and handling the usual stresses, changes and  
13 demands of gainful employment (A.R. 348). However, Dr. Unwalla also  
14 opined that, if Plaintiff had treatment, her condition "would  
15 significantly improve" (A.R. 348). Her prognosis was guarded (A.R.  
16 349).

17  
18 State agency psychologist Dr. Dara Goosby (erroneously referred  
19 to by Plaintiff as "Dr. Tanaka," see Plaintiff's Motion, p. 6)  
20 reviewed the record and opined on August 18, 2016 that Plaintiff had  
21 the residual functional capacity to understand and remember simple  
22 instructions, to sustain concentration, persistence and pace for work

---

24 <sup>4</sup> The GAF scale is used by clinicians to report an  
25 individual's overall level of functioning. See American  
26 Psychological Association, Diagnostic and Statistical Manual of  
27 Mental Disorders 34 (4th ed. 2000). A GAF of 41-50 indicates  
28 "[s]erious symptoms (e.g., suicidal ideation, severe obsessional  
rituals, frequent shoplifting), OR any serious impairment in  
social, occupational, or school functioning (e.g., no friends,  
unable to keep a job)." Id.



1 with simple 1-2 step tasks with no public contact, and could adapt to  
2 this capacity with no psychiatric treatment (A.R. 67-80). On  
3 reconsideration in October of 2016, psychologist Dr. Preston Davis  
4 agreed with the prior findings (A.R. 97-111).

5  
6 Plaintiff thereafter underwent regular mental health treatment  
7 with the Riverside County Department of Mental Health from October of  
8 2016 through at least November of 2018 (A.R. 476-561). Plaintiff  
9 attended weekly therapy visits with a social worker and monthly  
10 medication visits with Dr. Michael Chang and other providers (id.).  
11 Plaintiff initially presented with a goal of decreasing the symptoms  
12 of bipolar disorder with psychotic features, generalized anxiety and  
13 post traumatic stress disorder, depression, mania, hallucinations,  
14 anxiety and social isolation (A.R. 476). She reportedly was "stable  
15 and compliant with her physical health care including pain management"  
16 (A.R. 477).

17  
18 Dr. Willy Anand prepared an Adult Psychiatric Assessment dated  
19 November 4, 2016 (A.R. 551-54). Plaintiff reported that she had  
20 become depressed because of her medical situation, and she complained  
21 of depressed mood, irritability, poor sleep, poor concentration and  
22 low energy, with a supposed history of bipolar disorder diagnosis when  
23 she was a teenager (A.R. 551, 553). Plaintiff reportedly was treated  
24 with Effexor eight years earlier, and supposedly had not received any  
25 psychiatric treatment since then (A.R. 551). She had no evident  
26 psychosis, but claimed a history of hallucinations (A.R. 551). She  
27 had a history of drug use, reporting that she last used  
28 methamphetamine when she was 20 years old, last used cannabis six

1 years ago and last used cocaine when she was 20 years old (A.R. 552).  
2 She reportedly was living with her mother and significant other, she  
3 last had attempted to work in retail in 2014, and she was on probation  
4 for a theft-related charge (A.R. 552-53). Plaintiff's mental status  
5 examination was normal/appropriate with good insight and judgment  
6 (A.R. 553). Dr. Anand prescribed Celexa and recommended therapy (A.R.  
7 554).

8  
9 Later in November of 2016, Plaintiff reportedly was stable on  
10 Celexa, with a normal mental status exam (A.R. 485-86). She  
11 complained of insomnia for which Dr. Anand lowered her Celexa dosage  
12 (A.R. 486). In December of 2016, Plaintiff again reportedly was  
13 stable with a normal mental status exam, and she said she was  
14 performing activities outside the home and had been compliant with  
15 treatment (A.R. 486-87).

16  
17 In January of 2017, Plaintiff first met with Dr. Chang (A.R. 487-  
18 88). Plaintiff reported wide mood swings, sadness, crying, family  
19 problems, housing problems and financial problems (A.R. 487). She  
20 said that Celexa was causing her to have more anxiety and to become  
21 angry easily (A.R. 487). On mental status examination, she reportedly  
22 was depressed with labile affect, and she claimed hallucinations  
23 (i.e., "just occasional voices") (A.R. 488). She reportedly had a  
24 history of a substance induced mood disorder resulting in psychiatric  
25 hospitalization and impairing her social/occupational functioning  
26 (A.R. 488). She supposedly was adherent to her medications but "non-  
27 responsive," so Dr. Chang switched her medication from Celexa to  
28 Topamax (A.R. 488). When Plaintiff followed up with a nurse in

1 February of 2017, Plaintiff said that she was "doing ok" (A.R. 478).  
2

3 In March of 2017, Plaintiff reported anxiety, back pain, mood  
4 swings, anger, depression and sadness (A.R. 488-89). She reportedly  
5 then was homeless, jobless, moneyless and had separated from her  
6 husband (A.R. 489). Plaintiff's mother then was caring for  
7 Plaintiff's children (A.R. 489). Plaintiff reportedly was taking  
8 Topamax on an "irregular" basis (A.R. 489). On mental status  
9 examination, she was depressed but all findings were otherwise normal  
10 (A.R. 489). Dr. Chang described Plaintiff as "non-adherent" with  
11 medications and instructed her to taper her Topamax as prescribed  
12 (A.R. 489-90).<sup>5</sup>

---

13  
14 <sup>5</sup> Plaintiff began weekly therapy visits in April of 2017  
15 (A.R. 491). Plaintiff initially presented as anxious with  
16 blunt/flat affect and thought perseveration, but had fair  
17 judgment/insight (A.R. 491). She apparently had obtained her  
18 medications the day before (A.R. 491). She reported trauma  
19 related to seeing her husband cross-dressing (A.R. 491).

20 The following week, Plaintiff reportedly was anxious and  
21 disheveled with pressured speech, labile affect, loose thought  
22 process with perseveration, and distracted cognition, but had  
23 fair insight/judgment (A.R. 492). She was in "fair spirits,"  
24 sharing that her husband had moved into her mother's home with  
25 her and her children to help financially and that her husband  
26 wanted to work on their relationship (A.R. 492). She did not  
27 agree, given her husband's sexual behaviors; she was dating other  
28 people (A.R. 492-93).

The following week, she reportedly was disheveled, irritable  
and obsessed/preoccupied with her relationships and in poor  
spirits (A.R. 494). She reported that everything bothered her,  
and she was having difficulties at home (A.R. 494-95). The  
following week, she reportedly was disheveled with pressured  
speech, irritable mood and thought perseveration (A.R. 496). She  
said she was irritated with her husband and with her boyfriend  
(A.R. 496). Plaintiff called her therapist the next day to

(continued...)

1 In May of 2017, Plaintiff reportedly exhibited pressured speech,  
2 restlessness, anxious/irritable/depressed mood and distracted  
3 cognition (A.R. 501). Plaintiff said that Topamax was working better  
4 than other medications and was without side effects (A.R. 501).  
5 However, she also claimed problems with constantly running thoughts,  
6 insomnia, irritability and mood swings (A.R. 501). Dr. Chang ordered  
7 Plaintiff to increase her Topamax dose over the next two weeks and  
8 prescribed Seroquel for sleep, to decrease her running thoughts and to  
9 stabilize Plaintiff's mood (A.R. 502).<sup>6</sup>

10 ///

11 \_\_\_\_\_  
12 <sup>5</sup>(...continued)  
13 discuss relationship problems concerning her boyfriend (A.R.  
14 497).

15 Plaintiff returned for therapy the next week, reportedly in  
16 fair spirits with pressured speech, irritable mood, labile affect  
17 and thought perseveration (A.R. 499). She reported issues with  
18 her boyfriend and said she was dealing with a lot of stress from  
19 migraines and the finding of 8-9 brain lesions on a MRI (A.R.  
20 499). She reported not being able to schedule her medical  
21 appointments, complete Social Security paperwork, or remember to  
22 take her medications consistently (A.R. 500). Her therapist  
23 arranged for help for Plaintiff in scheduling appointments,  
24 completing her Social Security paperwork and setting medication  
25 timers (A.R. 500).

26 <sup>6</sup> At her next therapy visit in May of 2017, Plaintiff  
27 reportedly was irritable with blunted affect and thought  
28 perseveration, but in fair spirits (A.R. 503). She reported some  
health concerns regarding a lump in her breast and issues with  
her husband and her boyfriend (A.R. 503). Later in May, she  
reported to her therapist that she had a hard week, was irritated  
with her husband and had hit him due to her poor self-control  
(A.R. 506). She also said that she had an altercation with Del  
Taco staff for short-changing her (A.R. 506). Plaintiff admitted  
that she might be having stronger reactions because she had been  
without her medications (A.R. 506). At her last visit in May,  
Plaintiff reportedly was talkative, irritable per report, but in  
fair spirits despite continued romantic relationship concerns  
(A.R. 513).

1 On May 19, 2017, Dr. Chang stated that Plaintiff had left an  
2 "SSI" form to be filled out, but the doctor "could not find enough  
3 information in charts to be able to fill out the forms properly" (A.R.  
4 505).<sup>7</sup> Nonetheless, Dr. Chang did fill out the form entitled Medical  
5 Opinion re: Ability to Do Work-Related Activities (Mental) two days  
6 later. At that time, Dr. Chang suggested extreme limitations (A.R.  
7 418-19). Dr. Chang indicated that Plaintiff would be unable to meet  
8 competitive standards for almost all areas of functioning (i.e.,  
9 maintaining attention for two hour segments, maintaining regular  
10 attendance, sustaining an ordinary routine without special  
11 supervision, working in coordination with or proximity to others  
12 without being unduly distracted, making simple work-related decisions,  
13 completing a normal workday and workweek without interruptions from  
14 psychologically based symptoms, performing at a consistent pace  
15 without unreasonable number and length of rest periods, accepting  
16 instructions and responding appropriately to criticism from  
17 supervisors, getting along with coworkers or peers without unduly  
18 distracting them or exhibiting behavioral extremes, responding  
19 appropriately to changes in a routine work setting, dealing with  
20 normal work stress, understanding and remembering detailed  
21 instructions, carrying out detailed instructions, setting realistic  
22 goals or making plans independently of others, dealing with the stress  
23 of semiskilled and skilled work, interacting appropriately with the  
24 general public, maintaining socially appropriate behavior and using

---

25  
26 <sup>7</sup> Plaintiff reported at a June 27, 2017 therapy visit  
27 that she was waiting for SSI benefits and hoping to receive  
28 financial assistance (A.R. 521). She said the reason she could  
not work was that over half of the wages she earned from working  
would be taken for child support (A.R. 521).

1 public transportation) (A.R. 418-19). As to the remaining areas of  
2 functioning, Dr. Chang indicated limited or seriously limited  
3 abilities (A.R. 418-19). Dr. Chang stated that Plaintiff's "main  
4 problem is her inability to control her temper due to her Bipolar  
5 Disorder" (A.R. 419). According to Dr. Chang, Plaintiff has had  
6 behavioral problems since age 12 and was in juvenile hall by age 14  
7 due to her temper (A.R. 419). Dr. Chang opined that Plaintiff would  
8 miss more than four days of work per month due to her impairments  
9 (A.R. 419).

10  
11 When Plaintiff returned on May 26, 2017, Dr. Chang indicated that  
12 Plaintiff was talkative, restless, had anxious/irritable/depressed  
13 mood with dysphoric affect, had been off Topamax for several days and  
14 just started taking it again two days prior (A.R. 511).<sup>8</sup> At her next  
15 regular visit in June of 2017, Plaintiff reportedly was restless,  
16 anxious/depressed with dysphoric affect, had been off Topamax for  
17 several weeks and was experiencing mood swings (A.R. 523). Dr. Chang  
18 ordered Plaintiff to titrate back up to a regular dose of Topamax

19  
20  
21 <sup>8</sup> At her first therapy visit in June of 2017, Plaintiff  
22 reportedly was talkative, irritable per report with blunted  
23 affect and thought perseveration, but in fair spirits with the  
24 same relationship concerns (A.R. 515). At her next visit, she  
25 reportedly was disheveled, talkative, restless, irritable with  
26 thought perseveration, but in fair spirits (A.R. 517). Plaintiff  
27 reported getting agitated, irritated, frustrated and overwhelmed,  
28 which supposedly caused migraines (A.R. 517). When she returned  
the next week, she reportedly was talkative, irritable with  
blunted affect, but in fair spirits (A.R. 519). Evidently, she  
recently had been to court for stealing (A.R. 519). At her next  
visit, she reportedly was irritable with blunted affect, but in  
fair spirits, complaining of a migraine and increasing anger  
(A.R. 521).

1 (A.R. 524).<sup>9</sup> In July of 2017, Plaintiff reportedly was anxious/  
2 irritable/depressed with a dysphoric affect and she said that Topamax  
3 was helping to keep her mood stable (A.R. 529). Her medications were  
4 continued (A.R. 529).<sup>10</sup>  
5

6 In August of 2017, Plaintiff said she was anxious, irritable and  
7 depressed (A.R. 533). Dr. Chang noted that Plaintiff's Topamax was at  
8 a subtherapeutic level, so he increased the dose and added Zoloft  
9 (A.R. 533). In September of 2017, Plaintiff said she was anxious,  
10 irritable and depressed, but also said that Topamax was keeping her  
11 mood stable at its current dose (A.R. 535). Her medications were  
12 continued (A.R. 535).  
13

14 Dr. Chang prepared an annual assessment in November of 2017 (A.R.  
15 479-84). Plaintiff reportedly complained of constantly running  
16 thoughts, insomnia, irritability and mood swings, but her main problem  
17 was her "husband's desire to be trans gender [sic]" (A.R. 479). She  
18 said she had problems controlling her anger/irritation/aggression, and  
19

---

20 <sup>9</sup> At her next therapy visit in July of 2017, Plaintiff  
21 reportedly was talkative and irritable, but in fair spirits, and  
22 she was still having relationship issues with her estranged  
23 husband, on whom she relied for financial support (A.R. 525).  
24 She was awaiting a decision in her SSI case so she could change  
25 her situation (A.R. 525). Plaintiff had not been doing her anger  
26 management homework and reported that she almost got into an  
27 altercation with a woman in a park (A.R. 526). At her next  
28 visit, she reported being irritable and she mentioned issues with  
her living situation (A.R. 527).

<sup>10</sup> At her next therapy visit in August of 2017, Plaintiff  
reportedly was talkative with neutral mood, and fair spirits, and  
she said she was dealing with her husband's desire to transition  
to transgender (A.R. 531).

1 she also said she had difficult/intense relationships with others  
2 (A.R. 480). She admitted a history of substance abuse, but claimed  
3 she had stopped using 10 years before (A.R. 482). She and her husband  
4 reportedly then were homeless and were moving around from cousin to  
5 cousin (A.R. 482). She reportedly was also on probation for assault  
6 and drug possession (A.R. 482).

7  
8 According to a mental status examination, Plaintiff was normal/  
9 responsive, had good eye contact, appropriate speech, sad/depressed/  
10 anxious mood with congruent affect, had suicidal ideation with low  
11 risk, paranoid delusions, auditory hallucinations, fair concentration,  
12 average knowledge and intelligence, partial insight and fair judgment  
13 (A.R. 483). Dr. Chang assessed Plaintiff as severely depressed with  
14 low self worth, chronic sadness, "negative voic[es]," no desire to  
15 live, irritability and anger impairing her ability to work and to be  
16 sociable (A.R. 484). Dr. Chang increased Plaintiff's Topomax and  
17 continued her Seroquel (A.R. 484).

18  
19 At Plaintiff's next visit in January of 2018, Dr. Chang reported  
20 that Remeron and Seroquel were helping Plaintiff sleep, that  
21 irritability was her main problem (for which she was taking Topamax),  
22 and that Plaintiff's neurologist was taking over the prescribing of  
23 Topamax (A.R. 539). Dr. Chang added a prescription for Risperdal for  
24 anger and irritability (A.R. 540). In March of 2018, Dr. Chang noted  
25 that Plaintiff was no longer seeing her neurologist, so he added a  
26 Topamax prescription (A.R. 541-42). In April of 2018, Dr. Chang  
27 increased Plaintiff's Topamax upon observing that Plaintiff's  
28 medication was subtherapeutic (A.R. 543-44). In May of 2018, Dr.



1 Chang continued Plaintiff's medications (A.R. 545-46). In July of  
2 2018, Dr. Chang stated that Plaintiff's new generic Topamax was  
3 causing unwanted side effects, so he continued her medications with a  
4 different brand of Topamax (A.R. 549-50).

5  
6 **II. Substantial Evidence Supports the Conclusion that Plaintiff is**  
7 **Not Disabled By Her Mental Impairments.**

8  
9 Substantial evidence supports the conclusion Plaintiff's mental  
10 impairments do not disable her from all employment. The ALJ  
11 rationally found Plaintiff capable of performing light work, limited  
12 to simple routine tasks, no jobs at a production rate pace, such as an  
13 assembly line, simple work-related decisions, few changes in the work  
14 place, and occasional contact with supervisors, coworkers but no  
15 direct contact with the public (A.R. 22).

16  
17 As indicated above, consultative examiner Dr. Unwalla opined that  
18 Plaintiff's reported mental condition would significantly improve with  
19 treatment (A.R. 348).<sup>11</sup> The state agency physicians reviewed the  
20 medical record prior to Plaintiff receiving any mental health  
21 treatment, and found that, even without treatment, Plaintiff had a  
22 residual functional capacity to understand and remember simple  
23 instructions, and to sustain concentration, persistence and pace for  
24 simple 1-2 step tasks, with no public contact. See A.R. 67-90, 97-

25 \_\_\_\_\_  
26 <sup>11</sup> Some courts have found that moderate mental functional  
27 limitations do not preclude the performance of jobs that involve  
28 simple, repetitive tasks. See, e.g., McLain v. Astrue, 2011 WL  
2174895, at \*6 (C.D. Cal. June 3, 2011); Rogers v. Commissioner,  
2011 WL 445047, at \*11-2 (E.D. Cal. Jan. 25, 2011).

1 111. Given the medical records summarized above, these medical  
2 opinions constitute substantial evidence supporting the ALJ's non-  
3 disability determination. See Orn v. Astrue, 495 F.3d 625, 631-32  
4 (9th Cir. 2007) (opinion of examining physician based on independent  
5 clinical findings can provide substantial evidence to support  
6 administrative conclusion of non-disability); Tonapetyan v. Halter,  
7 242 F.3d 1144, 1149 (9th Cir. 2001) (opinion of non-examining  
8 physician "may constitute substantial evidence when it is consistent  
9 with other independent evidence in the record"); Andrews v. Shalala,  
10 53 F.3d 1035, 1041 (9th Cir. 1995) (where the opinions of  
11 non-examining physicians do not contradict "all other evidence in the  
12 record" an ALJ properly may rely on these opinions) (citation and  
13 emphasis omitted).

14  
15 Plaintiff faults the ALJ for rejecting Dr. Chang's more  
16 restrictive opinions, Dr. Unwalla's opinions to the extent allegedly  
17 inconsistent with the ALJ's residual functional capacity assessment,  
18 and the state agency psychologists' opinions limiting Plaintiff to 1-2  
19 step tasks. See Plaintiff's Motion, pp. 10-12. Generally, a treating  
20 physician's conclusions "must be given substantial weight." Embrey v.  
21 Bowen, 849 F.2d 418, 422 (9th Cir. 1988); see Rodriguez v. Bowen, 876  
22 F.2d 759, 762 (9th Cir. 1989) ("the ALJ must give sufficient weight to  
23 the subjective aspects of a doctor's opinion. . . . This is  
24 especially true when the opinion is that of a treating physician")  
25 (citation omitted); see also Garrison v. Colvin, 759 F.3d 995, 1012  
26 (9th Cir. 2014) (discussing deference owed to the opinions of treating  
27 and examining physicians). Even where the treating physician's  
28 opinions

1 are contradicted,<sup>12</sup> "if the ALJ wishes to disregard the opinion[s] of  
2 the treating physician he . . . must make findings setting forth  
3 specific, legitimate reasons for doing so that are based on  
4 substantial evidence in the record." Winans v. Bowen, 853 F.2d 643,  
5 647 (9th Cir. 1987) (citation, quotations and brackets omitted); see  
6 Rodriguez v. Bowen, 876 F.2d at 762 ("The ALJ may disregard the  
7 treating physician's opinion, but only by setting forth specific,  
8 legitimate reasons for doing so, and this decision must itself be  
9 based on substantial evidence") (citation and quotations omitted).  
10 Contrary to Plaintiff's arguments, the ALJ stated sufficient reasons  
11 for discounting Dr. Chang's extreme opinions.

12  
13 The ALJ appropriately gave little weight to Dr. Chang's opinions.  
14 As the ALJ stated, Dr. Chang's opinions were conclusory, inadequately  
15 supported by clinical findings, and unsupported by mental health  
16 treatment records which generally reflected mild mental status  
17 examination findings (in contrast to Plaintiff's extreme subjective  
18 complaints) (A.R. 27, 29). Dr. Chang himself admitted that he "could  
19 not find enough information in [Plaintiff's medical] charts" to fill  
20 out the assessment form before filling out the form with extreme  
21 opinions soon thereafter (A.R. 505). An ALJ may properly reject a  
22 treating physician's opinion where, as here, the opinion is not  
23 adequately supported by treatment notes or objective clinical  
24 findings. See Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir.

---

25  
26  
27 <sup>12</sup> Rejection of an uncontradicted opinion of a treating  
28 physician requires a statement of "clear and convincing" reasons.  
Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Gallant v.  
Heckler, 753 F.2d 1450, 1454 (9th Cir. 1984).

1 2008) (ALJ may reject a treating physician's opinion that is  
2 inconsistent with other medical evidence, including the physician's  
3 treatment notes); Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir.  
4 2003) (treating physician's opinion properly rejected where  
5 physician's treatment notes "provide no basis for the functional  
6 restrictions he opined should be imposed on [the claimant]"); see also  
7 20 C.F.R. §§ 404.1527(c), 416.927(c) (factors to consider in weighing  
8 treating source opinion include the supportability of the opinion by  
9 medical signs and laboratory findings as well as the opinion's  
10 consistency with the record as a whole).

11  
12 The ALJ need not have explicitly detailed the reasons for  
13 arguably failing to adopt some of Dr. Unwalla's opinions. See Nyman  
14 v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985) ("Nyman") (upholding  
15 ALJ's rejection of "the expert opinion of an examining psychologist"  
16 despite the fact that the ALJ made the rejection "without stating his  
17 reasons for doing so"; ALJ "was not obliged to explicitly detail his  
18 reasons for rejecting the psychologist's opinion"); but see Garrison  
19 v. Colvin, 759 F.3d at 1012 (stating, contrary to Nyman, that an ALJ  
20 may reject an examining physician's opinion only "by providing  
21 specific and legitimate reasons that are supported by substantial  
22 evidence") (citations and quotations omitted). If the law required  
23 the ALJ to state specific and legitimate reasons for failing to adopt  
24 all of Dr. Unwalla's opinions, the ALJ did so here.

25  
26 The ALJ appropriately rejected Dr. Unwalla's opinion suggesting  
27 greater limitations in the absence of treatment as overly restrictive  
28 in light of Plaintiff's "longitudinal history of treatment, documented

1 mental health records, and her own testimony and reports regarding  
2 activities of daily living" (A.R. 29). The ALJ accurately found  
3 Plaintiff's mental status presentation with Dr. Unwalla extreme  
4 compared to Plaintiff's other mental status examinations (after she  
5 started treatment) which were largely mild/normal (A.R. 29). As the  
6 ALJ observed, Dr. Unwalla opined that Plaintiff was unable to perform  
7 activities of daily living due to her mental limitations (A.R. 348),  
8 and yet there was nothing in the record to support such an extreme  
9 opinion. To the contrary, Plaintiff admitted the ability to prepare  
10 meals, do laundry, walk places, grocery shop, drive, and play video  
11 games (A.R. 244-47). See A.R. 23, 29. These inconsistencies between  
12 Dr. Unwalla's opinions and Plaintiff's own reports and the subsequent  
13 treatment record are sufficient reasons for rejecting those of Dr.  
14 Unwalla's opinions that conflicted with the ALJ's assessment. See  
15 Tommasetti v. Astrue, 533 F.3d at 1041; Connett v. Barnhart, 340 F.3d  
16 at 875. Moreover, Dr. Unwalla opined that, with treatment,  
17 Plaintiff's condition would significantly improve. Such opinion  
18 supported the ALJ's decision. See Warre v. Commissioner, 439 F.3d  
19 1001, 1006 (9th Cir. 2006) (impairments that can be controlled  
20 effectively with treatment are not disabling).

21  
22 The ALJ also appropriately rejected the state agency physicians'  
23 opinions to the extent those opinions limited Plaintiff to simple 1-2  
24 step tasks. Such rejection was warranted, given Plaintiff's admitted  
25 activities of daily living (which again included playing video games,  
26 making full course meals, grocery shopping and doing laundry, see A.R.  
27 244-47), Plaintiff's medical treatment (which involved psychotropic  
28 medications that Plaintiff did not always take as prescribed, see A.R.

1 484, 486, 488-90, 501, 511, 523-24, 529, 535, 540-42, 544-46, 549-50,  
2 554), and Plaintiff's mental status examination findings (which were  
3 largely normal, see A.R. 483-84, 486-89, 553) (A.R. 23, 26-28). See,  
4 e.g., Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001).

5  
6 An ALJ is not required to discuss all evidence presented, and  
7 need explain why only significant probative evidence has been  
8 rejected. See Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012  
9 (9th Cir. 2003); Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir.  
10 1984). While Plaintiff argues contrary interpretations of the  
11 evidence, it was for the ALJ to interpret the evidence, evaluate  
12 credibility and resolve any conflicts. See Treichler v. Commissioner,  
13 775 F.3d 1090, 1098 (9th Cir. 2014) (court "leaves it to the ALJ" "to  
14 resolve conflicts and ambiguities in the record"); Lewis v. Apfel, 236  
15 F.3d 503, 509 (9th Cir. 2001); Andrews v. Shalala, 53 F.3d at 1039-40.  
16 When evidence "is susceptible to more than one rational  
17 interpretation," the Court must uphold the administrative decision.  
18 See Andrews v. Shalala, 53 F.3d at 1039-40; accord Thomas v. Barnhart,  
19 278 F.3d 947, 954 (9th Cir. 2002); Sandgathe v. Chater, 108 F.3d 978,  
20 980 (9th Cir. 1997). The Court will uphold the ALJ's rational  
21 interpretation of the evidence in the present case notwithstanding any  
22 conflicts in the evidence.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **III. Plaintiff's Remaining Arguments are Unavailing.**<sup>13</sup>

2  
3 Plaintiff contends that the ALJ erred in relying on the  
4 vocational expert's testimony. See Plaintiff's Motion, pp. 13-14  
5 (citing asserted conflicts between the expert's testimony and three  
6 non-DOT sources (i.e., Occupational Information Network ("O\*Net"),  
7 Occupational Outlook Handbook ("OOH"), and Bureau of Labor Statistics  
8 data at A.R. 312-21)).

9  
10 "At Step Five, 'the Commissioner has the burden to identify  
11 specific jobs existing in substantial numbers in the national economy  
12 that [a] claimant can perform despite [her] identified limitations.'" Rounds v. Commissioner, 807 F.3d 996, 1002 (9th Cir. 2015) (quoting  
13 Zavalin v. Colvin, 778 F.3d 842, 845 (9th Cir. 2015)). "When there is  
14 an apparent conflict between the vocational expert's testimony and the  
15 [Dictionary of Occupational Titles ("DOT")] - for example, expert  
16 testimony that a claimant can perform an occupation involving DOT  
17 requirements that appear more than the claimant can handle - the ALJ  
18 is required to reconcile the inconsistency." Zavalin v. Colvin, 778  
19 F.3d at 846. A conflict is apparent only if the challenged vocational  
20 requirement is "essential, integral, or expected" for the job.  
21 Gutierrez v. Colvin, 844 F.3d 804, 808 (9th Cir. 2016). No such

---

22  
23  
24 <sup>13</sup> The Court has considered and rejected all of the  
25 arguments raised in Plaintiff's motion for summary judgment. The  
26 Court discusses Plaintiff's principal arguments herein. Neither  
27 Plaintiff's arguments nor the circumstances of this case show any  
28 "substantial likelihood of prejudice" resulting from any error  
allegedly committed by the ALJ. See generally McLeod v. Astrue,  
640 F.3d 881, 887-88 (9th Cir. 2011) (discussing the standards  
applicable to evaluating prejudice).

1 conflict is apparent in this case.  
2

3 The ALJ found that a person with Plaintiff's residual functional  
4 capacity could perform light, unskilled work as a production  
5 assembler, router, and marker II (A.R. 31). The vocational expert had  
6 identified these jobs as consistent with the DOT, and explained that  
7 the production assembly job does bench assembly work, so the job is  
8 not an assembly line job (A.R. 62-63). The Court discerns no conflict  
9 between the vocational expert's testimony and the DOT.  
10

11 Plaintiff points out that the jobs identified by the ALJ require  
12 Reasoning Level 2 (Plaintiff's Motion, p. 8). The vocational expert  
13 and the ALJ determined that a person who is capable of simple routine  
14 work can perform jobs requiring Reasoning Level 2. Nothing in the DOT  
15 conflicts with this determination. See Rounds v. Commissioner, 807  
16 F.3d at 1004 n.6 (collecting cases holding that a limitation to  
17 "simple" or "repetitive" tasks is consistent with the ability to  
18 perform jobs requiring Reasoning Level 2, which means the ability to:  
19 "Apply commonsense understanding to carry out detailed but uninvolved  
20 written or oral instructions. Deal with problems involving a few  
21 concrete variables in or from standardized situations."); see also  
22 Lewis v. Berryhill, 708 Fed. App'x 919, 920 (9th Cir. 2018) (ALJ did  
23 not err in finding claimant could perform job requiring Level 2  
24 reasoning where claimant was limited to "work involving simple  
25 instructions"); Little v. Berryhill, 708 Fed. App'x 468, 469-70 (9th  
26 Cir. 2018) (limitation to jobs with Level 2 reasoning or less is  
27 consistent with limitation to following "simple directions"); compare  
28 Zavalin v. Colvin, 778 F.3d at 843-44 (apparent conflict exists



1 between limitation to "simple, routine or repetitive tasks" and "the  
2 demands of Level 3 Reasoning").

3  
4 To the extent Plaintiff may argue that the ALJ should have  
5 included in the hypothetical questions posed to the vocational expert  
6 the state agency psychologists' opinion that Plaintiff should be  
7 limited to 1-2 step tasks, the Court discerns no error. The ALJ  
8 properly rejected a limitation to 1-2 step tasks, and instead found  
9 Plaintiff capable of performing simple routine work (A.R. 28).  
10 Hypothetical questions posed to a vocational expert need not include  
11 all conceivable limitations that a favorable interpretation of the  
12 record might suggest to exist - only those limitations the ALJ finds  
13 to exist. See, e.g., Bayliss v. Barnhart, 427 F.3d 1211, 1217-18 (9th  
14 Cir. 2005); Rollins v. Massanari, 261 F.3d at 857; Magallanes v.  
15 Bowen, 881 F.2d 747, 756-57 (9th Cir. 1989). Here, the hypothetical  
16 question posed to the vocational expert included all limitations the  
17 ALJ properly found to exist (compare A.R. 22 with A.R. 62-63). The  
18 vocational expert testified that a person with these limitations could  
19 perform certain jobs existing in significant numbers in the national  
20 economy (A.R. 62-63). The ALJ properly relied on this testimony in  
21 finding Plaintiff not disabled. See Barker v. Secretary of Health and  
22 Human Services, 882 F.2d 1474, 1478-80 (9th Cir. 1989); Martinez v.  
23 Heckler, 807 F.2d 771, 774-75 (9th Cir. 1986).

24  
25 Plaintiff argues that the number of jobs the vocational expert  
26 estimated for each position should be eroded in supposed accordance  
27 data from O\*NET and OOH (Plaintiff's Motion, pp. 13-14). Plaintiff  
28 argues that this data creates a conflict the ALJ should have resolved

1 (Plaintiff's Motion, p. 14).

2

3 The ALJ's duty to reconcile conflicts between a vocational  
4 expert's testimony and the DOT does not extend to non-DOT sources.  
5 See Shaibi v. Berryhill, 883 F.3d 1102, 1109-10 (9th Cir. 2017) ("[W]e  
6 can find no case, regulation, or statute suggesting that an ALJ must  
7 *sua sponte* take administrative notice of economic data in the . . .  
8 OOH. It is true that an ALJ is required to investigate and resolve  
9 any apparent conflict between the [vocational expert's] testimony and  
10 the DOT, regardless of whether a claimant raises the conflict before  
11 the agency. . . . But Shaibi cites to no authority suggesting the  
12 same is true for the . . . OOH. Our precedent holds, instead, that an  
13 ALJ may rely on a vocational expert's testimony concerning the number  
14 of relevant jobs in the national economy, and need not inquire *sua*  
15 *sponte* into the foundation for the expert's opinion) (citations  
16 omitted); see also David G. V. Saul, 2020 WL 1184434, at \*5 (C.D. Cal.  
17 March 11, 2020) ("courts in this circuit have consistently found that  
18 an ALJ is under no obligation to resolve conflicts between VE  
19 testimony and . . . O\*NET data"); Wagner v. Berryhill, 2018 WL  
20 3956485, at \*5-6 (C.D. Cal. Aug. 14, 2018) (ALJ has no obligation to  
21 address vocational expert's deviation from sources other than the DOT,  
22 including the O\*NET); Seaberry v. Berryhill, 2018 WL 1425985, at \*6  
23 (C.D. Cal. Mar. 22, 2018) (collecting cases finding that ALJ is under  
24 no obligation to resolve a conflict between vocational expert  
25 testimony and OOH or O\*NET data).

26

27 The vocational expert properly relied on the expert's  
28 professional expertise to estimate there were 58,000 production

