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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JESSICA OLIVE,  
Plaintiff,  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social  
Security,  
Defendant.

CASE NO. SACV 17-1765 SS

**MEMORANDUM DECISION AND ORDER**

**I.**

**INTRODUCTION**

Jessica Olive ("Plaintiff") brings this action seeking to overturn the decision of the Acting Commissioner of Social Security (the "Commissioner" or "Agency") denying her application for Disability Insurance Benefits. The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. (Dkt. Nos. 11-13). For the reasons stated below, the Court AFFIRMS the Commissioner's decision.

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**II.**

**PROCEDURAL HISTORY**

On June 17, 2014, Plaintiff filed an application for Disability Insurance Benefits, pursuant to Title II of the Social Security Act ("Act"), alleging a disability onset date of September 9, 2013. (AR 85, 141-44). The Commissioner denied Plaintiff's application initially and on reconsideration. (AR 76-95). Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"), which took place on September 29, 2015.<sup>1</sup> (AR 30-75, 105-06). The ALJ issued an adverse decision on February 22, 2016, finding that Plaintiff was not disabled because there are jobs in the national economy that she can perform. (AR 17-25). On August 17, 2017, the Appeals Council denied Plaintiff's request for review. (AR 1-6). This action followed on October 10, 2017.

**III.**

**FACTUAL BACKGROUND**

Plaintiff was born on February 27, 1984. (AR 141). She was thirty-one (31) years old when she appeared before the ALJ on July 26, 2016. (AR 39). Plaintiff is a high-school graduate and has an associate's degree. (AR 40). She is single and lives with her parents. (AR 61, 169, 183). Plaintiff last worked in September

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<sup>1</sup> Plaintiff was unrepresented at the hearing. The ALJ appraised Plaintiff of the right to be represented by an attorney, but she elected to proceed without representation. (AR 32-36).

1 2013 as a receptionist. (AR 65, 161). She alleges disability due  
2 to anxiety, panic attacks, and severe depression. (AR 160).

3  
4 **A. Plaintiff's Statements and Testimony**

5  
6 On June 28, 2014, Plaintiff submitted an Adult Function  
7 Report. (AR 169-77). She asserted that she is unable to work due  
8 to severe panic attacks that cause extreme dizziness, shaking,  
9 nausea, diarrhea, inability to focus, anxiety, paranoia, and sleep  
10 disturbances. (AR 169-70). Plaintiff also asserted that her  
11 mental impairments affect her vision and her ability to memorize  
12 and concentrate. (AR 174). Plaintiff is able to exercise, read,  
13 write, listen to music, and go outside. (AR 170). She has no  
14 problems with personal care, including dressing, bathing, taking  
15 her medications, and feeding herself. (AR 170-71). Plaintiff is  
16 able to prepare meals, do house and yard work, and care for her  
17 dog. (AR 170-71). She occasionally drives and shops in stores.  
18 (AR 172). Plaintiff's hobbies and interests include occasional  
19 reading, writing, watching television, blogging, photography and  
20 playing baseball. (AR 173). She regularly socializes with friends  
21 and family, with no problems getting along with others. (AR 173-  
22 74).

23  
24 In an August 2014 Disability Report, Plaintiff asserted that  
25 her panic attacks prevent her from doing everyday activities. (AR  
26 223). The stresses of work created issues where she could not  
27 breathe or think, would get dizzy and nauseous, and would have  
28 severe diarrhea. (AR 223). She has severe problems talking on

1 the phone and going outside and interacting with people because of  
2 her panic attacks and anxiety. (AR 223).

3  
4 At Plaintiff's hearing, she testified that she is unable to  
5 work because of symptoms related to anxiety, depression, and PTSD.  
6 (AR 57). Social functions, being on the phone, and looking for  
7 work exacerbate her panic attacks. (AR 57). She suffers from  
8 significant anxiety, which causes diarrhea, shaking, and an  
9 inability to think. (AR 57). She has made some progress with her  
10 recent therapist. (AR 53-55). While Prozac and Zyprexa have  
11 helped her depression significantly, they affect her memory and  
12 cause headaches. (AR 56-58). Plaintiff testified that she tries  
13 to help out around the house when her anxiety is under control.  
14 (AR 61-62).

15  
16 **B. Treatment History**

17  
18 Plaintiff sought treatment with Kaiser in Salem, Oregon, since  
19 July 2013. (AR 264). On July 11, 2013, Plaintiff complained of  
20 increase anxiety associated with job stressors. (AR 264). She  
21 reported trying to find a new job. (AR 284). She reported being  
22 overly tearful, difficulty breathing, and nausea. (AR 264). She  
23 was diagnosed with an adjustment disorder with mixed anxiety and  
24 depression and prescribed Prozac. (AR 264-65). On July 18,  
25 Plaintiff reported worsening anxiety and stress, with eye twitching  
26 and intermittent chest tightness. (AR 266). On September 19,  
27 Plaintiff reported that her depression was improving, but anxiety  
28

1 was still present. (AR 267). She was diagnosed with panic disorder  
2 without agoraphobia and major depressive disorder. (AR 263).

3  
4 On September 10, 2013, Barbara Hoover, D.O., Plaintiff's  
5 primary care doctor, diagnosed generalized anxiety disorder and  
6 prescribed Ativan to relieve Plaintiff's panic symptoms at work.  
7 (AR 277). On September 19, Plaintiff reported her depression as  
8 improving but anxiety is still present. (AR 277). She reported  
9 being on short-term disability due to her panic attacks. (AR 277).  
10 Dr. Hoover recommended that she continue off work until her  
11 depression and anxiety stabilized. (AR 277). On October 3,  
12 Plaintiff reported a decrease in panic attacks. (AR 276).

13  
14 On September 12, 2013, Plaintiff began treating with New  
15 Perspectives Center for individual psychotherapy. (AR 297). She  
16 reported high anxiety, panic attacks, and depression. (AR 298).  
17 Recurrent panic attacks cause extreme distress and have impaired  
18 her ability to work. (AR 298). Although Plaintiff reported recent  
19 suicidal thoughts, she denied any plans or intent. (AR 298). Her  
20 anxiety and depression symptoms include nightmares, sleep  
21 disturbance, exaggerated startle response, depressed mood, weight  
22 loss/gain, anhedonia, severe psychomotor agitation, feelings of  
23 worthlessness, low self-esteem, poor appetite, muscle tension,  
24 irritability, fatigue, panic attacks, excessive worry, difficulty  
25 concentrating, and difficulty sustaining attention. (AR 300-01).  
26 Plaintiff was diagnosed with panic disorder without agoraphobia  
27 and major depressive disorder and assigned a Global Assessment of  
28

1 Functioning ("GAF") score of 45.<sup>2</sup> (AR 297). Plaintiff continued  
2 with weekly individualized psychotherapy sessions during September  
3 and October 2013. (AR 313-21). On September 26, Plaintiff reported  
4 actively applying for jobs working in customer service. (AR 319).  
5 On October 30, Plaintiff reported dealing with anxiety better. (AR  
6 313).

7  
8 In October 2013, Plaintiff began treating with Sarah Dubal, a  
9 psychiatric mental health nurse practitioner. (AR 270-72).  
10 Plaintiff complained of severe depression and some anxiety. (AR  
11 270). A mental status examination was unremarkable. (AR 270).  
12 Dubal diagnosed adjustment disorder with disturbance of mood and  
13 anxiety and transitioned Plaintiff from Prozac to Zoloft. (AR 270-  
14 71). Three weeks later, Plaintiff complained that she feels worse  
15 with Zoloft, except panic attacks are only about every three days.  
16 (AR 270). Dubal suggested Plaintiff try 5-HTP as an alternative  
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19 <sup>2</sup> "A GAF score is a rough estimate of an individual's  
20 psychological, social, and occupational functioning used to reflect  
21 the individual's need for treatment." Vargas v. Lambert, 159 F.3d  
22 1161, 1164 n.2 (9th Cir. 1998). The GAF includes a scale ranging  
23 from 0-100, and indicates a "clinician's judgment of the  
24 individual's overall level of functioning." American Psychiatric  
25 Association, Diagnostic and Statistical Manual of Mental Disorders  
26 32 (4th ed. text rev. 2000) (hereinafter DSM-IV). According to  
27 DSM-IV, a GAF score between 41 and 50 describes "serious symptoms"  
28 or "any serious impairment in social, occupational, or school  
functioning." Id. 34. "Although GAF scores, standing alone, do  
not control determinations of whether a person's mental impairments  
rise to the level of a disability (or interact with physical  
impairments to create a disability), they may be a useful  
measurement." Garrison v. Colvin, 759 F.3d 995, 1003 n.4 (9th Cir.  
2014).

1 for her.<sup>3</sup> On November 11, Plaintiff reported feeling better with  
2 5-HTP than either Prozac or Zoloft, although the 5-HTP was helping  
3 more with depression than anxiety. (AR 269). A mental status  
4 examination was unremarkable. (AR 269).

5  
6 In January 2014, Plaintiff began treating with Clarissa J.  
7 Shepherd, a licensed professional counselor. (AR 328). Plaintiff  
8 reported panic attacks, including unfocused vision, loss of breath,  
9 shaking, nausea, uncontrolled crying, and diarrhea. (AR 329). A  
10 mental status examination was unremarkable. Plaintiff was fully  
11 oriented and her affect, appearance, speech, attention,  
12 concentration, memory, mood, thought content, insight, judgment  
13 and intellectual functioning were all normal. (AR 329-30). There  
14 were no signs of hallucinations or delusions. (AR 330). Shepherd  
15 diagnosed major depressive disorder and generalized anxiety  
16 disorder and assigned a GAF score of 50. (AR 332). Plaintiff  
17 continued with individualized, weekly therapy sessions from January  
18 to May 2014. (AR 333-41). In February 2014, Plaintiff reported  
19 feeling better and being able to engage in a variety of activities,  
20 including walking her dog on a daily basis and enjoying a variety  
21 of social interactions. (AR 337-38). Over the course of her  
22 treatment, Plaintiff reported that her symptoms of anxiety and  
23 depression decreased as she followed through with her treatment

24 \_\_\_\_\_  
25 <sup>3</sup> 5-HTP is an herbal remedy that "increases the synthesis of  
26 serotonin [and] is used for several diseases where serotonin is  
27 believed to play an important role including depression, insomnia,  
28 obesity, and many other conditions." <<https://www.webmd.com/vitamins/ai/ingredientmono-794/5-htp>> (last visited August 3, 2018).

1 plan. (AR 326). On July 18, 2014, Shepherd opined that Plaintiff  
2 is unable to perform required workplace duties, such as sustaining  
3 concentration or being able to socially interact and adapt to  
4 workplace situations and environment. (AR 327).

5  
6 On July 17, 2014, Sohini P. Parikh, M.D., reviewed the medical  
7 record and performed a complete psychiatric evaluation on behalf  
8 of the Commissioner. (AR 343-50). Plaintiff was casually dressed  
9 and reasonably groomed with a normal posture and gait. (AR 343).  
10 Her chief complaints were depression, anxiety, and "medical  
11 problems." (AR 343). She reported feeling depressed and  
12 frustrated due to the situation at her workplace beginning in July  
13 2013. (AR 344). Plaintiff claimed she was "picked on and given a  
14 hard time at work." (AR 344). She reported anxiety attacks with  
15 increased heart rate, sweatiness, and dizzy spells. (AR 344). Big  
16 crowds "bother her a lot." (AR 344). She denied any psychosis or  
17 any suicidal or homicidal ideations. (AR 344). Plaintiff is able  
18 to drive, manage funds, and pay bills. (AR 346). She is able to  
19 cook, shop, and do housekeeping. (AR 346). Plaintiff cares for  
20 herself and her dog. (AR 346). She has close friends, gets along  
21 with her family, and has no problems with her neighbors. (AR 346).

22  
23 Dr. Parikh conducted a mental status examination. (AR 346-  
24 48). Plaintiff was alert, attentive, cooperative, and followed  
25 simple oral and written instructions. (AR 346). No cognitive  
26 problems were noted. (AR 346). Plaintiff's speech was normal,  
27 she was fully oriented, with logical form of thought, and normal  
28 thought content. (AR 347). Plaintiff's mood was depressed and



1 anxious and her affect was "brighter." (AR 347). She denied any  
2 feelings of hopelessness, helplessness, anhedonia, or  
3 worthlessness. (AR 347). She denied hallucinations, delusions,  
4 phobias, or any preoccupations with suicidal or homicidal  
5 ideations. (AR 347). Plaintiff's abstract thinking, judgment,  
6 insight, memory, and intellectual functioning were all  
7 unremarkable. (AR 347-48).

8  
9 Dr. Parikh diagnosed anxiety disorder and depressive disorder  
10 and assigned a GAF score of 66 to 71.<sup>4</sup> (AR 349). She opined that  
11 Plaintiff might have a mild impairment in the ability to reason  
12 and to make social, occupational, and personal adjustments. (AR  
13 349). Specifically, Dr. Parikh concluded that Plaintiff has no  
14 mental restrictions in daily activities; mild mental difficulties  
15 in maintaining social functioning; no impairments with  
16 concentration, persistence, or pace; mild episodes of emotional  
17 deterioration in work-like situations; no impairment in  
18 understanding, carrying out, and remembering simple instructions;  
19 mild impairment in understanding, carrying out, and remembering  
20 complex instructions; mild impairment in responding to coworkers,

21  
22 <sup>4</sup> According to DSM-IV, a GAF score between 61 and 70 indicates  
23 some mild symptoms (e.g., depressed mood and mild insomnia or some  
24 difficulty in social, occupational, or school functioning (e.g.,  
25 occasional truancy, or theft within household), but generally  
26 functioning well, has some meaningful interpersonal relationships.  
27 DSM-IV 34. A GAF score between 71 and 80 indicates that if symptoms  
28 are present, they are transient and expectable reactions to  
psychosocial stressors (e.g., difficulty concentrating after  
family argument); no more than slight impairment in social,  
occupational, or school functioning (e.g., temporarily falling  
behind in schoolwork). Id.

1 supervisors, and the general public; mild impairment in responding  
2 appropriately to usual work situations; and mild impairment in  
3 dealing with changes in a routine work setting. (AR 349-50).

4  
5 In July 2014, Plaintiff moved to California to live with her  
6 parents but did not begin treatment until January 2015. (AR 326,  
7 356, 393). At her initial intake at Kaiser in Anaheim, California,  
8 Plaintiff complained of anxiety and depression. (AR 356). Her  
9 reported symptoms included tearfulness, anhedonia, fluctuating  
10 weight, insomnia, irritability, fatigue, feeling worthless,  
11 reduced concentration and memory, panic, lack of consistent  
12 motivation, and conflict with friends. (AR 357-58). She denied  
13 psychosis and homicidal or suicidal ideations. (AR 358). A mental  
14 status examination was largely unremarkable. (AR 359). Although  
15 her mood was depressed and anxious, her appearance, behavior,  
16 affect, motor activity, speech, orientation, alertness, memory,  
17 insight, judgment, thought form, and thought content were all  
18 normal. (AR 359). Plaintiff was diagnosed with major depression  
19 and panic disorder and assigned a GAF score of 51 to 60.<sup>5</sup> (AR  
20 360). Her condition fluctuated with weekly therapy sessions and  
21 treatment. In February, Plaintiff presented with an anxious and  
22 depressed mood and a tearful affect. (AR 372). Other than an  
23 anxious and depressed mood, a mental status examination on February  
24 20, 2015, was unremarkable. (AR 395-96). Nancy Lee Tram Dom,

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25 <sup>5</sup> A GAF score between 51 and 60 indicates moderate symptoms  
26 (e.g., flat affect and circumlocutory speech, occasional panic  
27 attacks) or moderate difficulty in social, occupational, or school  
28 functioning (e.g., few friends, conflicts with peers or co-  
workers). DSM-IV 34.

1 M.D., diagnosed bipolar II disorder and panic disorder and assigned  
2 a GAF score of 55. (AR 397). Dr. Dom prescribed Seroquel and  
3 recommended that Plaintiff continue individual psychotherapy. (AR  
4 397). On February 25, Plaintiff reported that Seroquel "has helped  
5 her significantly." (AR 410). She feels happier, less anxious,  
6 and more able to use coping skills. (AR 410). A mental status  
7 examination was unremarkable. (AR 410).

8  
9 On March 19, 2015, Plaintiff was "feeling a little tired, but  
10 pretty good." (AR 434). She reported working on wedding plans  
11 for her friend. (AR 434). Other than an anxious and depressed  
12 mood, a mental status examination was unremarkable. (AR 423). Dr.  
13 Dom discontinued Seroquel due to concerns about cardiac side  
14 effects and started Risperdal. (AR 423-24). On March 27, Plaintiff  
15 reported side effects of headaches and dizziness. (AR 441). She  
16 also reported that anxiety and mood symptoms have worsened  
17 significantly since tapering off of Seroquel. (AR 441). On  
18 examination, Plaintiff's mood was anxious and depressed and her  
19 affect restricted and congruent. (AR 442). Dr. Dom diagnosed  
20 bipolar I disorder and panic disorder and assigned a GAF score of  
21 50 to 55. (AR 442). Dr. Dom discontinued Risperdal and started  
22 Trileptal. (AR 442). On April 22, Plaintiff reported that  
23 Trileptal was ineffective at controlling either her anxiety or her  
24 depression. (AR 452). Dr. Dom discontinued Trileptal and started  
25 Abilify. (AR 453).

26  
27 On May 6, 2015, Plaintiff reported anxiety when looking online  
28 for jobs. (AR 464). On May 12, Plaintiff reported side effects

1 of occasional hand tremors and restlessness and no significant  
2 improvements in mood with Abilify. (AR 471). Plaintiff is making  
3 an effort to engage in social activities, including attending  
4 church functions. (AR 471). Dr. Dom discontinued Abilify due to  
5 the side effects and started Latuda. (AR 472). On May 28,  
6 Plaintiff reported that she had stopped Latuda due to side effects  
7 of palpitations and chest pressure and was taking herbal  
8 medications. (AR 487). Her depression is better but she  
9 experiences almost daily panic attacks. (AR 487). Plaintiff is  
10 able to engage in social activities and will be going to Utah to  
11 help her grandmother move into nursing home for three weeks  
12 beginning in June. (AR 487, 502). Other than an anxious mood and  
13 a restricted and congruent affect, a mental status examination was  
14 unremarkable. (AR 488). On July 17, Plaintiff reported that she  
15 has been more stable with herbal medications. (AR 509). She has  
16 mood swings but is generally able to control them. (AR 509). Other  
17 than an anxious mood and a restricted and congruent affect, a  
18 mental status examination was normal. (AR 510). Dr. Dom diagnosed  
19 bipolar I disorder and panic disorder, prescribed hydroxyzine, and  
20 assigned a GAF score of 55. (AR 510). On September 1, Plaintiff  
21 reported that she had stopped hydroxyzine because it caused her to  
22 be too sedated the next day. (AR 532). Because her depression  
23 has worsened and she was experiencing daily panic attacks,  
24 Plaintiff was open to trying psychotropic medications. (AR 532).  
25 Other than an anxious and depressed mood and a restricted and  
26 congruent affect, a mental status examination was unremarkable.  
27 (AR 533). Dr. Dom prescribed Zyprexa and Prozac. (AR 534).

28

1 **C. State Agency Consultants**

2  
3 On August 12, 2014, Pamela Hawkins, Ph.D, a state agency  
4 consultant, evaluated the mental health records and concluded that  
5 Plaintiff's anxiety and depression are nonsevere. (AR 81). She  
6 opined that Plaintiff has a mild restriction of activities of daily  
7 living, mild difficulties in maintaining social functioning, and  
8 mild difficulties in maintaining concentration, persistence or  
9 pace. (AR 81). Dr. Hawkins concluded that Plaintiff's mental  
10 impairments do not significantly limit her ability to do basic work  
11 activities. (AR 82). On September 3, 2014, R.E. Brooks, M.D.,  
12 concurred with Dr. Hawkins's assessment. (AR 90-92).

13  
14 **IV.**

15 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

16  
17 To qualify for disability benefits, a claimant must  
18 demonstrate a medically determinable physical or mental impairment  
19 that prevents the claimant from engaging in substantial gainful  
20 activity and that is expected to result in death or to last for a  
21 continuous period of at least twelve months. Reddick v. Chater,  
22 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)).  
23 The impairment must render the claimant incapable of performing  
24 work previously performed or any other substantial gainful  
25 employment that exists in the national economy. Tackett v. Apfel,  
26 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
27 § 423(d)(2)(A)).  
28

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

4  
5 (1) Is the claimant presently engaged in substantial gainful  
6 activity? If so, the claimant is found not disabled. If  
7 not, proceed to step two.

8 (2) Is the claimant's impairment severe? If not, the  
9 claimant is found not disabled. If so, proceed to step  
10 three.

11 (3) Does the claimant's impairment meet or equal one of the  
12 specific impairments described in 20 C.F.R. Part 404,  
13 Subpart P, Appendix 1? If so, the claimant is found  
14 disabled. If not, proceed to step four.

15 (4) Is the claimant capable of performing his past work? If  
16 so, the claimant is found not disabled. If not, proceed  
17 to step five.

18 (5) Is the claimant able to do any other work? If not, the  
19 claimant is found disabled. If so, the claimant is found  
20 not disabled.

21  
22 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
23 262 F.3d 949, 953-54 (9th Cir. 2001); 20 C.F.R. §§ 404.1520(b)-  
24 (g) (1), 416.920(b)-(g) (1).

25  
26 The claimant has the burden of proof at steps one through four  
27 and the Commissioner has the burden of proof at step five.  
28 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an

1 affirmative duty to assist the claimant in developing the record  
2 at every step of the inquiry. Id. at 954. If, at step four, the  
3 claimant meets his or her burden of establishing an inability to  
4 perform past work, the Commissioner must show that the claimant  
5 can perform some other work that exists in "significant numbers"  
6 in the national economy, taking into account the claimant's  
7 residual functional capacity ("RFC"), age, education, and work  
8 experience. Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at  
9 721; 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner  
10 may do so by the testimony of a VE or by reference to the Medical-  
11 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,  
12 Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel,  
13 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both  
14 exertional (strength-related) and non-exertional limitations, the  
15 Grids are inapplicable and the ALJ must take the testimony of a  
16 vocational expert ("VE"). Moore v. Apfel, 216 F.3d 864, 869 (9th  
17 Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335, 1340 (9th Cir.  
18 1988)).

19  
20 **V.**

21 **THE ALJ'S DECISION**

22  
23 The ALJ employed the five-step sequential evaluation process  
24 and concluded that Plaintiff was not disabled within the meaning  
25 of the Social Security Act. (AR 17-25). At step one, the ALJ  
26 found that Plaintiff has not engaged in substantial gainful  
27 activity since September 9, 2013, her alleged onset date. (AR 19).  
28 At step two, the ALJ found that Plaintiff's bipolar disorder,

1 anxiety disorder, and panic disorder are severe impairments.<sup>6</sup> (AR  
2 19). At step three, the ALJ determined that Plaintiff does not  
3 have an impairment or combination of impairments that meet or  
4 medically equal the severity of any of the listings enumerated in  
5 the regulations. (AR 20-21).

6  
7 The ALJ then assessed Plaintiff's RFC and concluded that she  
8 can perform a full range of work at all exertional levels but with  
9 the following nonexertional limitations: "she is limited to work  
10 involving simple[,] repetitive tasks; she is limited to work  
11 involving no more than occasional contact with coworkers; and she  
12 is limited to work involving no public contact." (AR 21). At step  
13 four, the ALJ found that Plaintiff is unable to perform any past  
14 relevant work. (AR 23-24). Based on Plaintiff's RFC, age,  
15 education, work experience, and the VE's testimony, the ALJ  
16 determined at step five that there are jobs that exist in  
17 significant numbers in the national economy that Plaintiff can  
18 perform, including packager and assembler. (AR 24-25).  
19 Accordingly, the ALJ found that Plaintiff was not under a  
20 disability, as defined by the Social Security Act, from September  
21 9, 2013, through the date of the decision. (AR 25).

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25 <sup>6</sup> The ALJ found that Plaintiff's medically determinable  
26 impairments of asthma and severe obesity do not cause more than  
27 minimal limitations in Plaintiff's ability to perform basic work  
28 activities and are, therefore, nonsevere. (AR 19). The ALJ also  
found that Plaintiff's alleged fibromyalgia is not a medically  
determinable impairment. (AR 19-20).



1 VI.

2 STANDARD OF REVIEW

3  
4 Under 42 U.S.C. § 405(g), a district court may review the  
5 Commissioner's decision to deny benefits. The court may set aside  
6 the Commissioner's decision when the ALJ's findings are based on  
7 legal error or are not supported by substantial evidence in the  
8 record as a whole. Garrison v. Colvin, 759 F.3d 995 (9th Cir.  
9 2014) (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050,  
10 1052 (9th Cir. 2006)); Auckland v. Massanari, 257 F.3d 1033, 1035  
11 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen v.  
12 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen,  
13 885 F.2d 597, 601 (9th Cir. 1989)).

14  
15 "Substantial evidence is more than a scintilla, but less than  
16 a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v.  
17 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
18 evidence which a reasonable person might accept as adequate to  
19 support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066;  
20 Smolen, 80 F.3d at 1279). To determine whether substantial  
21 evidence supports a finding, the court must "'consider the record  
22 as a whole, weighing both evidence that supports and evidence that  
23 detracts from the [Commissioner's] conclusion.'" Auckland, 257  
24 F.3d at 1035 (citing Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.  
25 1993)). If the evidence can reasonably support either affirming  
26 or reversing that conclusion, the court may not substitute its  
27 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-  
28 21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

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**VII.**

**DISCUSSION**

Plaintiff asserted that she is unable to work due to severe panic attacks that cause extreme dizziness, shaking, nausea, diarrhea, inability to focus, anxiety, paranoia, and insomnia. (AR 57, 169-70, 223). She also asserted that her mental impairments affect her vision, memory, and concentration. (AR 174). Plaintiff testified that social functions, being on the phone, and looking for work exacerbate her panic attacks. (AR 57).

When assessing a claimant's credibility regarding subjective pain or intensity of symptoms, the ALJ must engage in a two-step analysis. Trevizo v. Berryhill, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine if there is medical evidence of an impairment that could reasonably produce the symptoms alleged. Garrison, 759 F.3d at 1014. "In this analysis, the claimant is not required to show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom." Id. (emphasis in original) (citation omitted). "Nor must a claimant produce objective medical evidence of the pain or fatigue itself, or the severity thereof." Id. (citation omitted).

If the claimant satisfies this first step, and there is no evidence of malingering, the ALJ must provide specific, clear and convincing reasons for rejecting the claimant's testimony about the symptom severity. Trevizo, 871 F.3d at 678 (citation omitted);

1 see also Smolen, 80 F.3d at 1284 (“[T]he ALJ may reject the  
2 claimant’s testimony regarding the severity of her symptoms only  
3 if he makes specific findings stating clear and convincing reasons  
4 for doing so.”); Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883  
5 (9th Cir. 2006) (“[U]nless an ALJ makes a finding of malingering  
6 based on affirmative evidence thereof, he or she may only find an  
7 applicant not credible by making specific findings as to  
8 credibility and stating clear and convincing reasons for each.”).  
9 “This is not an easy requirement to meet: The clear and convincing  
10 standard is the most demanding required in Social Security cases.”  
11 Garrison, 759 F.3d at 1015 (citation omitted).

12  
13 In discrediting the claimant’s subjective symptom testimony,  
14 the ALJ may consider the following:

15  
16 (1) ordinary techniques of credibility evaluation, such  
17 as the claimant’s reputation for lying, prior  
18 inconsistent statements concerning the symptoms, and  
19 other testimony by the claimant that appears less than  
20 candid; (2) unexplained or inadequately explained  
21 failure to seek treatment or to follow a prescribed  
22 course of treatment; and (3) the claimant’s daily  
23 activities.

24  
25 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citation  
26 omitted). Inconsistencies between a claimant’s testimony and  
27 conduct, or internal contradictions in the claimant’s testimony,  
28 also may be relevant. Burrell v. Colvin, 775 F.3d 1133, 1137 (9th

1 Cir. 2014); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.  
2 1997). In addition, the ALJ may consider the observations of  
3 treating and examining physicians regarding, among other matters,  
4 the functional restrictions caused by the claimant's symptoms.  
5 Smolen, 80 F.3d at 1284; accord Burrell, 775 F.3d at 1137. However,  
6 it is improper for an ALJ to reject subjective testimony based  
7 "solely" on its inconsistencies with the objective medical evidence  
8 presented. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227  
9 (9th Cir. 2009) (citation omitted).

10  
11 Further, the ALJ must make a credibility determination with  
12 findings that are "sufficiently specific to permit the court to  
13 conclude that the ALJ did not arbitrarily discredit claimant's  
14 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.  
15 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d 487,  
16 493 (9th Cir. 2015) ("A finding that a claimant's testimony is not  
17 credible must be sufficiently specific to allow a reviewing court  
18 to conclude the adjudicator rejected the claimant's testimony on  
19 permissible grounds and did not arbitrarily discredit a claimant's  
20 testimony regarding pain.") (citation omitted). Although an ALJ's  
21 interpretation of a claimant's testimony may not be the only  
22 reasonable one, if it is supported by substantial evidence, "it is  
23 not [the court's] role to second-guess it." Rollins v. Massanari,  
24 261 F.3d 853, 857 (9th Cir. 2001).

25  
26 The ALJ provided multiple, specific, clear, and convincing  
27 reasons, supported by evidence in the record, to find Plaintiff's  
28 complaints of disabling anxiety, panic attacks, and mental

1 symptomology only partially credible. (AR 30). These reasons are  
2 sufficient to support the Commissioner's decision.<sup>7</sup>

3  
4 First, the ALJ found that Plaintiff's statements were  
5 internally inconsistent. (AR 23). "[T]he ALJ may consider  
6 inconsistencies either in the claimant's testimony or between the  
7 testimony and the claimant's conduct." Molina v. Astrue, 674 F.3d  
8 1104, 1112 (9th Cir. 2012); see Burch v. Barnhart, 400 F.3d 676,  
9 680 (9th Cir. 2005) ("ALJ may engage in ordinary techniques of  
10 credibility evaluation, such as . . . inconsistencies in  
11 claimant's testimony"); accord 20 C.F.R. §§ 404.1529(c)(4),  
12 416.929(c)(4). In an August 2014 Disability Report, Plaintiff  
13 asserted that she cannot go outside and interact with people  
14 because of her anxiety. (AR 223). Plaintiff testified that social  
15 functions, being out in public, and looking for work exacerbate  
16 her panic attacks. (AR 57-58, 63). She acknowledged to her  
17 therapist, however, that she is able to engage in a variety of  
18 activities, including walking her dog on a daily basis, inviting

19 <sup>7</sup> Plaintiff contends that "the ALJ simply sets forth the oft  
20 rejected boilerplate language numerous courts have rejected as  
21 boilerplate." (Dkt. No. 19 at 7). Indeed, the Ninth Circuit has  
22 noted with disfavor that "ALJs with frequency include the  
23 boilerplate language discrediting the claimant's symptom testimony  
24 because it is 'inconsistent with' the RFC in their disability  
25 determinations." Laborin v. Berryhill, 867 F.3d 1151, 1154 (9th  
26 Cir. 2017) (citation omitted). However, "[b]ecause the claimant's  
27 symptom testimony must be taken into account when the ALJ assesses  
28 the claimant's RFC, it cannot be discredited because it is  
inconsistent with that RFC." Id. Nevertheless, the error is  
harmless where the ALJ, as he did here (AR 21-23), also gives  
specific and valid reasons supported by substantial evidence for  
rejecting the claimant's subjective statements. Laborin, 867 F.3d  
at 1154 ("inclusion of this flawed boilerplate language is not, by  
itself, reversible error and can be harmless").

1 friends over to her home, and other social activities. (AR 23,  
2 337-38). Plaintiff also acknowledged planning a friend's wedding,  
3 attending church, and travelling to Utah to help her grandmother  
4 transition into a nursing home, at trip which took three weeks.  
5 (AR 23, 434, 471, 487, 502). Plaintiff reported to Dr. Parikh that  
6 she is able to drive, shop and engage in social activities with  
7 family, friends, and neighbors. (AR 346). The ALJ properly  
8 concluded that "these inconsistencies . . . diminish [Plaintiff's]  
9 credibility." (AR 23).

10  
11 Second, Plaintiff's allegations were inconsistent with her  
12 acknowledged activities of daily living. (AR 23). "ALJs must be  
13 especially cautious in concluding that daily activities are  
14 inconsistent with testimony about pain, because impairments that  
15 would unquestionably preclude work and all the pressures of a  
16 workplace environment will often be consistent with doing more than  
17 merely resting in bed all day." Garrison, 759 F.3d at 1016.  
18 Nevertheless, an ALJ properly may consider the claimant's daily  
19 activities in weighing credibility. Tommasetti, 533 F.3d at 1039.  
20 If a claimant's level of activity is inconsistent with the  
21 claimant's asserted limitations, it has a bearing on credibility.  
22 Garrison, 759 F.3d at 1016. Here, Plaintiff asserted that her  
23 panic attacks prevent her from even doing everyday activities. (AR  
24 223). She testified that her anxiety and panic attacks cause  
25 significant problems with memory and concentration. (AR 56-59,  
26 62-63; see id. 174). Nevertheless, Plaintiff acknowledged  
27 performing independent personal care, including dressing, bathing,  
28 and taking her medications, caring for her dog, doing housework,

1 and preparing meals. (AR 23, 170-72). She reported to Dr. Parikh  
2 that she is able to manage funds, pay bills, cook, do housekeeping,  
3 and care for herself and her dog. (AR 346). These acknowledged  
4 activities of daily living belie Plaintiff's assertions of  
5 debilitating symptoms.

6  
7 Plaintiff contends that "[e]vidence that a claimant can  
8 participate in basic human function 'is not determinative of  
9 disability.'" (Dkt. No. 19 at 10) (quoting Magallanes v. Bowen,  
10 881 F.2d 747, 756 (9th Cir. 1989)). Indeed, "[h]ouse chores,  
11 cooking simple meals, self-grooming, paying bills, writing checks,  
12 and caring for a cat in one's own home, as well as occasional  
13 shopping outside the home, are not similar to typical work  
14 responsibilities." Diedrich v. Berryhill, 874 F.3d 634, 643 (9th  
15 Cir. 2017). The ALJ, however, was not citing Plaintiff's  
16 activities of daily living for the proposition that these  
17 activities are readily "transferable to a work environment."  
18 Ghanim, 763 F.3d at 1165. Instead, the ALJ found that Plaintiff's  
19 activities of daily living undermined her subjective statements of  
20 severe, debilitating symptoms. See id. ("Engaging in daily  
21 activities that are incompatible with the severity of symptoms  
22 alleged can support an adverse credibility determination.").

23  
24 Third, the ALJ found that Plaintiff's acknowledged work search  
25 contradicts her allegation of disabling panic attacks and other  
26 symptoms. (AR 23). Throughout the medical record, Plaintiff  
27 reported that she was applying and looking for work. (AR 284, 319,  
28 464). The ALJ properly concluded that Plaintiff's actions were

1 inconsistent with being disabled from all types of employment. (AR  
2 23); see Bray, 554 F.3d at 1227 (in reaching a credibility  
3 determination, ALJ may consider Plaintiff's work record, including  
4 employment searches); Macri v. Chater, 93 F.3d 540, 544 (9th Cir.  
5 1996) (when assessing subjective complaints, ALJ may consider  
6 Plaintiff's enrollment in training course, attempts to seek work,  
7 and failure to find work because of economic slowdown). Further,  
8 Plaintiff's active work search is inconsistent with her allegations  
9 that her mental impairments preclude her from engaging in social  
10 functions, using the phone, being out in public, and interacting  
11 with people. (AR 21, 23; see id. 57-58, 223).

12  
13 Plaintiff argues that "[a]ll [Plaintiff's job search]  
14 demonstrates is that the stress of working or looking for work in  
15 hopes of being able to work again one day is consistent with [her]  
16 testimony." (Dkt. No. 19 at 13). The ALJ found, however, that  
17 Plaintiff's acknowledged job search activities contradict her  
18 statements that she is unable to be on the phone and interact with  
19 people. (AR 21, 23). Further, as Plaintiff acknowledged in her  
20 brief, she "reported in July 2013 that her current job was causing  
21 her stress and she was looking for a new job." (Dkt. No. 19 at  
22 12). This is consistent with the ALJ's finding that Plaintiff  
23 cannot perform any past relevant work but that there are simple,  
24 repetitive jobs, with no more than occasional contact with  
25 coworkers and no public contact, in the national economy that she  
26 can perform. (AR 21-25).



1 Fourth, the ALJ found that Plaintiff's allegations of  
2 disabling anxiety, chronic panic attacks, and severe depression  
3 were inconsistent with the objective medical evidence, which  
4 indicated that "[h]er condition waxed and waned with treatment."  
5 (AR 21-22). While inconsistencies with the objective medical  
6 evidence cannot be the sole ground for rejecting a claimant's  
7 subjective testimony, it is a factor that the ALJ may consider when  
8 evaluating credibility. Bray, 554 F.3d at 1227; Burch, 400 F.3d  
9 at 681; Rollins, 261 F.3d at 857; see SSR 16-3p, at \*5 ("objective  
10 medical evidence is a useful indicator to help make reasonable  
11 conclusions about the intensity and persistence of symptoms,  
12 including the effects those symptoms may have on the ability to  
13 perform work-related activities"). After treating with New  
14 Perspectives Center for six weeks, Plaintiff reported dealing with  
15 anxiety better. (AR 313). In October and November 2013, while  
16 trying various medications, mental status examinations were  
17 unremarkable. (AR 269-72). After individualized, weekly therapy  
18 sessions during January through July 2014, Plaintiff reported  
19 feeling better and being able to engage in activities of daily  
20 living, including walking her dog and enjoying a variety of social  
21 interactions. (AR 337-38). She acknowledged that her symptoms of  
22 anxiety and depression decreased as she followed through with the  
23 treatment plan. (AR 326). After moving to California, a mental  
24 status examination in January 2015 was largely unremarkable. (AR  
25 359). Although her mood was depressed and anxious, her appearance,  
26 behavior, affect, motor activity, speech, orientation, alertness,  
27 memory, insight, judgment, thought form, and thought content were  
28 all normal. (AR 359). Thereafter, her condition fluctuated with

1 weekly therapy sessions and treatment. (AR 372-534). Various  
2 medications, both prescription and herbal, were used to control  
3 Plaintiff's symptomology, with a range of efficacy. (AR 410, 442,  
4 471, 487, 509, 532, 534). In May, July, and September 2015, other  
5 than an anxious mood and a restricted and congruent affect, mental  
6 status examinations were normal. (AR 488, 510, 533).

7  
8 Plaintiff does not identify any relevant medical evidence  
9 overlooked by the ALJ. Instead, she contends that the ALJ's  
10 subjective symptom analysis was contrary to law. (Dkt. No. 19 at  
11 7-9). However, as discussed above, the ALJ's analysis was  
12 consistent with the law and supported by specific, clear, and  
13 convincing reasons for rejecting Plaintiff's testimony.  
14 Furthermore, the ALJ did not completely reject Plaintiff's  
15 testimony. (AR 21-23). Indeed, partly because of Plaintiff's  
16 subjective statements that the ALJ found credible, the ALJ rejected  
17 Dr. Parikh's assessments and those of the State agency mental  
18 consultants, who found that Plaintiff's mental impairments were  
19 nonsevere. (AR 22, 23; see id. 81-82, 90-92, 349-50). Based on  
20 Plaintiff's subjective statements, the ALJ found that Plaintiff  
21 has moderate difficulties in social functioning and with regard to  
22 concentration, persistence, or pace. (AR 20) (citing id. 169-77,  
23 223) (Plaintiff's Adult Function Report and Disability Report on  
24 appeal). The ALJ accommodated Plaintiff's moderate difficulties  
25 in social functioning and in concentration, persistence, or pace  
26 by restricting her to simple, repetitive tasks, involving no more  
27 than occasional contact with coworkers and no public contact. (AR  
28 20, 21, 23). While these limitations preclude Plaintiff from

