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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NANTHA VONGPHACHANH,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 1:17-cv-00314-SAB

ORDER DENYING PLAINTIFF’S SOCIAL
SECURITY APPEAL

(ECF Nos. 16, 20, 21)

I.

INTRODUCTION

Plaintiff Nantha Vongphachanh (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for disability benefits pursuant to the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Stanley A. Boone.¹

Plaintiff suffers from major depressive disorder, posttraumatic stress disorder, diabetes, hypertension, and allergies. For the reasons set forth below, Plaintiff’s Social Security appeal shall be denied.

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¹ The parties have consented to the jurisdiction of the United States Magistrate Judge. (See ECF Nos. 7, 9.)

1 **II.**

2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 Plaintiff filed applications for a period of disability, disability insurance benefits, and
4 supplemental security income on August 24, 2012, alleging disability beginning June 25, 2011.
5 (AR 214-215.) Plaintiff's applications were initially denied on April 12, 2013, and denied upon
6 reconsideration on October 24, 2013. (AR 103-107, 114-124.) Plaintiff requested and received a
7 hearing before Administrative Law Judge Sharon Madsen ("the ALJ"). Plaintiff appeared for a
8 hearing on March 5, 2015, but that hearing was postponed because the interpreter scheduled did
9 not speak Plaintiff's language. (AR 50-54.) Plaintiff then appeared for a hearing on June 16,
10 2015. (AR 29-49.) On June 25, 2015, the ALJ found that Plaintiff was not disabled. (AR 8-22.)
11 The Appeals Council denied Plaintiff's request for review on December 30, 2016. (AR 1-4.)

12 **A. Hearing Testimony**

13 Plaintiff testified at the hearing on June 16, 2015, with the assistance of a Laotian
14 interpreter.² (AR 31-42.) She lives in a house with two of her children and a male friend. (AR
15 33-34.) She has a driver's license and sometimes drives. (AR 34.) She has a fourth grade
16 education from when she was in Laos. (AR 34-35.) She also took some adult classes in the
17 United States. (AR 35.) She understands a little bit of English. (AR 35.)

18 She does not need any help showering or getting dressed. (AR 35.) She does some
19 chores and her children do other chores. (AR 35.) She microwaves food. (AR 35.) She goes
20 with her friend to shop sometimes. (AR 35.) On the weekend, she goes to church, and during
21 the week, she goes to an adult care center three days a week. (AR 35-36.) During a typical day,
22 she goes to the adult care center where she eats, does some exercise, and eats again. (AR 36.)
23 She stays home on days she is not going to the adult care center. (AR 36.) She watches TV and
24 visits with her mother. (AR 36.) She regularly takes her diabetes medication. (AR 38.) She
25 remembers to take it, but her children help administer her medication. (AR 38.)

26 She has seen Dr. Maximo Parayno and others for depression. (AR 40.) The takes

27 _____
28 ² As Plaintiff is only challenging a finding regarding her mental impairments and her literacy, the Court only discusses the parts of the record relevant to Plaintiff's mental impairments and literacy.

1 medication she takes helps. (AR 40-41.) Sometimes, she feels very sad, wants to cry, gets
2 angry, and wants to kill herself. (AR 40.) She talks to counselors once a month at an adult
3 program. (AR 40.) She meets with two people who work at the social program. (AR 41.)

4 She can somewhat pay attention to the TV. (AR 41.) The man that was living with her
5 helped her pay her bills. (AR 41.) She does not have a problem getting along with other people,
6 but she sometimes has a problem getting along with her mother. (AR 41.) She cannot fall asleep
7 due to her brain doing too much thinking. (AR 41-42.) She has nightmares two or three times a
8 week. (AR 42.) She is unable to finish projects that she starts. (AR 42.)

9 A vocational expert (“VE”) Judith Najarian, also testified at the hearing. (AR 42-48.)
10 The first hypothetical that the ALJ asked the VE was for an individual with the same age,
11 education, and work background as Plaintiff and who had “just a little bit of English” for
12 language. (AR 43-44.) This person could lift and carry 50 lbs occasionally and 25 lbs
13 frequently; sit, stand, or walk 6 to 8 hours a day; frequently climb ladders, ropes, or scaffolds;
14 and frequently perform gross handling. (AR 44.) This individual could not do Plaintiff’s past
15 relevant work as poultry dressing, but could do the grader for dress poultry position. (AR 43-
16 44.)

17 The second hypothetical is based on the first hypothetical with the additional limitation of
18 simple routine work. (AR 44.) This person has some English and can at least do demo jobs.
19 (AR 44-45.) The individual could be a rack loader, which is medium, SVP 1, and frequent
20 handling. (AR 45.) The VE did a 25% reduction of the number of jobs because of continuous
21 hand activity. (AR 45.) The individual could also be a carton forming machine operator, which
22 is medium and SVP 2, and the VE reduced the number of jobs by 50% because of continuous
23 hand activity. (AR 45.) The individual could also be a package sealer machine operator, which
24 is medium and SVP 2, and the VE reduced the number of jobs by 20% because of continuous
25 hand activity. (AR 46.)

26 **B. ALJ Findings**

- 27 • Plaintiff last met the insured status requirements of the Social Security Act on December
28 31, 2016.

- 1 • Plaintiff has not engaged in substantial gainful activity since June 25, 2011, the alleged
2 onset date.
- 3 • Plaintiff has the following severe impairments: lumbar degenerative joint disease, a
4 history of carpal tunnel syndrome status post bilateral surgical release, and depression.
- 5 • Plaintiff does not have an impairment or combination of impairments that meets or
6 medically equals the severity of one of the listed impairments.
- 7 • After careful consideration of the entire record, Plaintiff has the residual functional
8 capacity (“RFC”) to lift and carry 50 lbs occasionally and 25 lbs frequently; sit, stand,
9 and/or walk for 6 hours in an 8-hour workday; frequently climb ladders, ropes, or
10 scaffolds; and frequently perform gross handling. Mentally, Plaintiff can perform simple
11 routine tasks.
- 12 • Plaintiff is unable to perform any past relevant work.
- 13 • Plaintiff was born on June 12, 1967, and was 44 years old, which is defined as a younger
14 individual age 18-49, on the alleged disability onset date.
- 15 • Plaintiff has a marginal education and is able to communicate in English.
- 16 • Transferability of job skills is not an issue in this case because Plaintiff’s past relevant
17 work is unskilled.
- 18 • Considering Plaintiff’s age, education, work experience, and RFC, there are jobs that
19 exist in significant numbers in the national economy that Plaintiff can perform.
- 20 • Plaintiff has not been under a disability, as defined in the Social Security Act, from June
21 25, 2011, through June 25, 2015.

22 (AR 11-23.)

23 **III.**

24 **LEGAL STANDARD**

25 To qualify for disability insurance benefits under the Social Security Act, the claimant
26 must show that she is unable “to engage in any substantial gainful activity by reason of any
27 medically determinable physical or mental impairment which can be expected to result in death
28 or which has lasted or can be expected to last for a continuous period of not less than 12

1 months.” 42 U.S.C. § 423(d)(1)(A). The Social Security Regulations set out a five step
2 sequential evaluation process to be used in determining if a claimant is disabled. 20 C.F.R. §
3 404.1520; Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1194 (9th
4 Cir. 2004). The five steps in the sequential evaluation in assessing whether the claimant is
5 disabled are:

6 Step one: Is the claimant presently engaged in substantial gainful activity? If so,
7 the claimant is not disabled. If not, proceed to step two.

8 Step two: Is the claimant’s alleged impairment sufficiently severe to limit his or
9 her ability to work? If so, proceed to step three. If not, the claimant is not
10 disabled.

11 Step three: Does the claimant’s impairment, or combination of impairments, meet
12 or equal an impairment listed in 20 C.F.R., pt. 404, subpt. P, app. 1? If so, the
13 claimant is disabled. If not, proceed to step four.

14 Step four: Does the claimant possess the residual functional capacity (“RFC”) to
15 perform his or her past relevant work? If so, the claimant is not disabled. If not,
16 proceed to step five.

17 Step five: Does the claimant’s RFC, when considered with the claimant’s age,
18 education, and work experience, allow him or her to adjust to other work that
19 exists in significant numbers in the national economy? If so, the claimant is not
20 disabled. If not, the claimant is disabled.

21 Stout v. Commissioner, Social Sec. Admin., 454 F.3d 1050, 1052 (9th Cir. 2006).

22 Congress has provided that an individual may obtain judicial review of any final decision
23 of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g).
24 In reviewing findings of fact in respect to the denial of benefits, this court “reviews the
25 Commissioner’s final decision for substantial evidence, and the Commissioner’s decision will be
26 disturbed only if it is not supported by substantial evidence or is based on legal error.” Hill v.
27 Astrue, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence” means more than a
28 scintilla, but less than a preponderance. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996)
(internal quotations and citations omitted). “Substantial evidence is relevant evidence which,
considering the record as a whole, a reasonable person might accept as adequate to support a
conclusion.” Thomas v. Barnhart, 278 F.3d 947, 955 (9th Cir. 2002) (quoting Flaten v. Sec’y of
Health & Human Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)).

“[A] reviewing court must consider the entire record as a whole and may not affirm

1 simply by isolating a specific quantum of supporting evidence.” Hill, 698 F.3d at 1159 (quoting
2 Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006). However, it is not
3 this Court’s function to second guess the ALJ’s conclusions and substitute the court’s judgment
4 for the ALJ’s. See Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (“Where evidence is
5 susceptible to more than one rational interpretation, it is the ALJ’s conclusion that must be
6 upheld.”).

7 IV.

8 DISCUSSION AND ANALYSIS

9 Plaintiff raises two main issues in this appeal. First, Plaintiff argues that the ALJ erred by
10 finding that she could communicate in English. Second, Plaintiff argues that the ALJ erred in
11 evaluating her mental impairments, and specifically, by rejecting Dr. Parayno’s opinions and not
12 addressing the GAF scores rendered by Dr. Manolito Castillo and Dr. Asher Gorelik.

13 Defendant counters that substantial evidence supports the ALJ’s finding that Plaintiff was
14 able to communicate in English and the ALJ’s rejection of Dr. Parayno’s opinions. Defendant
15 contends that an ALJ is not required to specifically address GAF scores.

16 A. Ability to Communicate in English

17 Plaintiff argues that the ALJ erred in finding that she was literate in English. Plaintiff
18 asserts that the evidence of her literacy is vague and somewhat confusing. Defendant responds
19 that the ALJ considered Plaintiff’s literacy in her decision and the finding that Plaintiff was able
20 to communicate in English is supported by substantial evidence.³ In reply, Plaintiff contends that
21 the ALJ did not ask Plaintiff whether she could read or write in English instructions or inventory
22 lists. Plaintiff also asserts that Defendant does not point out any evidence in the record that
23 would support that Plaintiff could do these things.

24 “The Commissioner has the burden to show that the claimant can perform other work
25 existing in the national economy, ‘given his residual functional capacity, age, education, and

26 ³ Defendant also provides reasons that were not cited by the ALJ. While the Court may draw reasonable inferences
27 from the ALJ’s opinion, Magallanes v. Bowen, 881 F.2d 747, 755 (9th Cir. 1989), it cannot consider Defendant’s
28 post hac rationalizations. “A reviewing court can evaluate an agency’s decision only on the grounds articulated by
the agency.” Ceguerra v. Sec’y of Health & Human Servs., 933 F.2d 735, 738 (9th Cir. 1991).

1 work experience.’ ” Silveira v. Apfel, 204 F.3d 1257, 1262, n.14 (9th Cir. 2000). Since literacy
2 is only relevant to the finding of whether Plaintiff can perform other work in the economy, and
3 not to whether she is disabled, the Commissioner bears the burden of establishing literacy. Id.

4 The Social Security regulations define illiteracy as an inability to read and write. 20
5 C.F.R. § 416.964(a)(1). The Ninth Circuit has held “only literacy in English is considered, since
6 literacy in other languages has little effect on the number of jobs in the national economy
7 available to the claimant. 20 C.F.R. § 416.964(b)(5). ‘Illiterate’ therefore means illiterate in
8 English. Chavez v. Dep’t of Health and Human Services, 103 F.3d 849, 852 (9th Cir. 1996); see
9 also Silveira, 204 F.3d at 1261 (illiteracy is the inability to read or write in English). However,
10 “[w]hile illiteracy or the inability to communicate in English may significantly limit an
11 individual’s vocational scope, the primary work functions in the bulk of unskilled work relate to
12 working with things (rather than with data or people) and in these work functions at the unskilled
13 level, literacy or ability to communicate in English has the least significance.” 20 C.F.R. Pt. 404,
14 Subpt. P, App. 2, § 201.00(I).

15 Here, the ALJ found:

16 Although the claimant intermittently used a Laotian interpreter at hearing, the
17 claimant also spoke some English at hearing, demonstrating the ability to
18 communicate in English. There were medical records that specifically noted the
19 claimant spoke English – and included a detailed history from the claimant about
20 her family problems and alleged life difficulties (Exhibit 9F, p. 1). The claimant
21 testified she had completed the 4th grade in Laos, but had also taken adult classes
22 in the United States. She testified she understood some English. I noted that
23 portions of claimant’s testimony were a mixture of Laotian and English words,
despite the availability of an interpreter. In fact, the claimant fully answered
some of my questions in English. The claimant admitted in her Disability Report
form that she preferred Laotian, but could read and understand English and write
more than her name in English (Exhibit 2E, p. 1). The claimant completed her
Adult Function Report in English (Exhibit 5E). These factors, taken as a whole,
support my finding that the claimant has marginal education and can
communicate in English.

24 (AR 21.)

25 Plaintiff believes that the record needs to be further developed regarding her ability to
26 speak, read, write, and understand English because she was not asked these questions at the
27 hearing. The ALJ has an independent “duty to fully and fairly develop the record and to assure
28 that the claimant’s interests are considered.” Widmark v. Barnhart, 454 F.3d 1063, 1068 (9th

1 Cir. 2006) (quoting Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983)). The ALJ has a duty
2 to further develop the record where the evidence is ambiguous or the ALJ finds that the record is
3 inadequate to allow for proper evaluation of the evidence. Mayes v. Massanari, 276 F.3d 453,
4 459-60 (9th Cir. 2001); Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001). Further, the
5 ALJ's duty to fully develop the record is heightened where the claimant may be mentally
6 disabled and, therefore, unable to protect her own interests. Higbee v. Sullivan, 975 F.2d 558,
7 562 (9th Cir. 1992).

8 Viewing the record as a whole, the Court finds that the ALJ did not err by not further
9 developing the record regarding Plaintiff's ability to communicate in English. Plaintiff does not
10 cite to any authority to support her argument that an ALJ must specifically ask a plaintiff during
11 a hearing to what extent she understands, speaks, reads, and writes English. The relevant
12 question on review is whether there is substantial evidence supporting the ALJ's finding. While
13 an ALJ may meet her burden for determining a plaintiff's ability to communicate in English by
14 asking a plaintiff about her abilities to communicate in English, it is not the only way. The
15 evidence in the record of a plaintiff's ability to communicate in English, such as reports or
16 doctors' visits, may provide substantial evidence for the ALJ's finding.

17 Here, the ALJ considered Plaintiff's ability to testify in English at the hearing. (AR 21.)
18 The ALJ discussed how Plaintiff answered some questions with a mixture of Laotian and English
19 words, and in fact, was able to fully answer some of the ALJ's questions in English. (AR 21.)
20 Plaintiff does not argue that this is inaccurate. Although Plaintiff argues that it is unclear
21 whether she is able to communicate in English, her ability to understand and speak English at the
22 hearing is evidence that she has the ability to communicate in English. Further, Plaintiff testified
23 during the hearing that she understood a little bit of English and that she had taken adult classes
24 in the United States. (AR 21, 35.)

25 The ALJ discussed Plaintiff's ability to speak English during her involuntary psychiatric
26 hospitalization in February 2014. (AR 393.) Dr. Castillo noted that Plaintiff spoke English.
27 (AR 393.) The history of present illness section of that psychiatry encounter report includes a
28 detailed history. (AR 393.) Plaintiff's ability to say a detailed accounting of her family

1 problems and life difficulties in English is evidence of her ability to speak English.

2 The ALJ relied on Plaintiff's statement in her disability report that she preferred to speak
3 and understand Laotian, but she could read and understand English and write more than her
4 name in English. (AR 21, 248.) While Plaintiff contends that the ALJ did not ask Plaintiff how
5 much more than her name she could write in English, there is other evidence in the record that
6 reflects Plaintiff's ability to write in English.

7 The ALJ considered that Plaintiff completed her Adult Function Report in English. (AR
8 21, 282-290.) Plaintiff argues that Plaintiff's function report appears to have been written by
9 someone else because the handwriting is different than the signatures on Plaintiff's request for
10 hearing by administrative law judge, appointment of representative, and acknowledgment of
11 receipt forms. Plaintiff's signature on these forms is different from her printed name on her
12 function report. However, Plaintiff did not sign the function report. (AR 282-290.) She printed
13 her name and the printed name is consistent with the handwriting used in the other sections of
14 the form. (AR 282-290.) The forms Plaintiff cites to do not call into question whether Plaintiff
15 wrote her disability report. While Plaintiff's printed name on her function report is different
16 from her signature on other documents, this does not mean that she did not write the function
17 report. It is a rational interpretation that Plaintiff's printed name and cursive signature are
18 different. In addition, Plaintiff's function report is written in the first person and when there are
19 mistakes crossed out, Plaintiff initialed these mistakes. (AR 282-289.) Therefore, the fact that
20 Plaintiff completed her adult function report in English supports the ALJ's finding that Plaintiff
21 can communicate in English.

22 Thus, the Court finds that there is substantial evidence in the record to support the ALJ's
23 finding that Plaintiff is literate in English.

24 **B. Plaintiff's Mental Impairments**

25 Plaintiff argues that the ALJ erred in evaluating her mental impairments because she
26 rejected the opinions of Dr. Parayno, Dr. Castillo, and Dr. Gorelik. Plaintiff also asserts that the
27 ALJ erred because she impermissibly substituted her own lay opinion when formulating
28 Plaintiff's mental RFC. Defendant responds that the ALJ provided good reasons explaining why

1 she rejected the opinions of Dr. Parayno.

2 The weight to be given to medical opinions depends upon whether the opinion is
3 proffered by a treating, examining, or non-examining professional. See Lester v. Chater, 81 F.3d
4 821, 830-831 (9th Cir. 1995). In general a treating physician's opinion is entitled to greater
5 weight than that of a nontreating physician because "he is employed to cure and has a greater
6 opportunity to know and observe the patient as an individual." Andrews v. Shalala, 53 F.3d
7 1035, 1040-41 (9th Cir. 1995) (citations omitted). If a treating physician's opinion is
8 contradicted by another doctor, it may be rejected only for "specific and legitimate reasons"
9 supported by substantial evidence in the record. Ryan v. Commissioner of Social Sec., 528 F.3d
10 1194, 1198 (9th Cir.) (quoting Bayless v. Barnhart, 427 F.3d 1121, 1216 (9th Cir. 2005)).

11 Where the treating physician's opinion is contradicted by the opinion of an examining
12 physician who based the opinion upon independent clinical findings that differ from those of the
13 treating physician, the nontreating source itself may be substantial evidence, and the ALJ is to
14 resolve the conflict. Andrews, 53 F.3d at 1041. However, if the nontreating physician's opinion
15 is based upon clinical findings considered by the treating physician, the ALJ must give specific
16 and legitimate reasons for rejecting the treating physician's opinion that are based on substantial
17 evidence in the record. Id.

18 The contrary opinion of a non-examining expert is not sufficient by itself to constitute a
19 specific, legitimate reason for rejecting a treating or examining physician's opinion, however, "it
20 may constitute substantial evidence when it is consistent with other independent evidence in the
21 record." Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). The ALJ need not accept
22 the opinion of any physician that is brief, conclusory, and unsupported by clinical findings.
23 Thomas, 278 F.3d at 957. It is the ALJ's responsibility to consider inconsistencies in a physician
24 opinion and resolve any ambiguity. Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 603
25 (9th Cir. 1999).

26 1. Dr. Parayno's Opinions

27 Plaintiff argues that the ALJ erred by rejecting the opinions of her treating psychiatrist,
28 Dr. Parayno. Dr. Parayno provided three opinions. His January 2013 opinion was on an

1 immigration form entitled Medical Certification for Disability Exceptions. (3F.) In July 2014,⁴
2 Dr. Parayno completed a county form stating that Plaintiff was unable to work. (AR 390-391.)
3 The third opinion that Dr. Parayno gave was a psychiatric evaluation on February 21, 2015. (AR
4 402-405.) The ALJ discussed these opinions separately, and therefore the Court will also
5 analyze these opinions separately.⁵

6 **a. January 2013 Opinion**

7 Dr. Parayno diagnosed Plaintiff with recurrent and severe major depressive disorder
8 without psychotic features and chronic PTSD as part of the January 14, 2013 immigration form.⁶
9 (AR 362.) He stated that Plaintiff was disoriented during a mental status assessment and did not
10 know the date, including the day, month, or year, her home address, and phone number. (AR
11 364.) She was tentative with her date of birth. (AR 364.) She had impaired remote and recent
12 memory and impaired concentration and attention span. (AR 364.) He opined that Plaintiff
13 could not read, write, and speak English. (AR 364.) He opined that she could not answer
14 questions regarding United States history and civics, even in a language that she understands.
15 (AR 364.) He found that her cognitive deficits such as impaired memory, concentration, and
16 attention span impacted her ability to learn English and a core knowledge of United States
17 history and civics. (AR 364.)

18 The ALJ gave the January 2013 opinion little weight. (AR 17.) The ALJ found:

19 I noted Dr. Parayno referred to the claimant intermittently as “he” and “she,”
20 suggesting either inattention or use of standardized answers. Furthermore, the
21 claimant testified she could understand some English and even testified, at times,
22 in the English language at hearing. His statement that the claimant could not give
23 her address, phone, or even date of birth was refuted by her testimony at hearing,
where she aptly demonstrated knowledge of such information. His statement that
the claimant had a “disability or impairment” was vague, as it provided no
functional limitations. Finally, his opinion that the claimant was “disabled”

24 ⁴ The ALJ states that this opinion was rendered in February 2014, but it appears from the form that it was signed by
Dr. Parayno on July 24, 2014. (AR 17, 390-391.)

25 ⁵ The Court notes that Defendant provides reasons for rejecting Dr. Parayno’s opinions that were not cited by the
26 ALJ. The Court cannot consider Defendant’s post hac rationalizations. See Ceguerra, 933 F.2d at 738.

27 ⁶ Plaintiff contends that Dr. Parayno spoke Plaintiff’s native language and points to an interpreter’s certification
28 form attached to Dr. Parayno’s January 2013 opinion. (AR 366.) However, the interpreter’s certification form
indicates that the interpreter used during Dr. Parayno’s examination of Plaintiff was Lilly Bliatout. (AR 366.)
There is no proof that Dr. Parayno spoke Plaintiff’s native language.

1 invades an issue reserved to the Commissioner (SSR 96-5p).
2 (AR 17.)

3 The fact that Dr. Parayno’s opinion is on a matter reserved for the Commissioner is in
4 itself not a specific and legitimate reason to reject the opinion. See Ghanim v. Colvin, 763 F.3d
5 1154, 1161 (9th Cir. 2014). Therefore, the Court reviews the other reasons to determine whether
6 the ALJ provided specific and legitimate reasons supported by substantial evidence for rejecting
7 Dr. Parayno’s 2013 opinion.

8 The ALJ found that Dr. Parayno’s use of “he” and “she” indicated inattentiveness or use
9 of standardized answers. (AR 17.) Dr. Parayno stated in response to question 8, “[f]rom the
10 trauma of war in Laos, **he** suffers from Post-traumatic Stress Disorder for having witnessed
11 deaths or threats to **her** life or serious injury to her physical integrity...” (AR 363) (emphasis
12 added). Dr. Parayno stated in response to question 9, “[s]**he** did not know the first President of
13 the United States ... **He** thought Thanksgiving month is October. **He** knew President Obama as
14 our President. **She** was not able to identify Q J G K & F or read TRIANGLE AND SQUARE
15 ARE DIFFERENT. (AR 364) (emphasis added). The ALJ found that this shows inattention or
16 the use of standardized answers, which supports the ALJ’s decision to give this opinion little
17 weight.

18 At the hearing, Plaintiff was able to state her address, phone number, and date of birth.
19 (AR 33.) In fact, when asked if her phone number was what was on file, she indicated that it had
20 changed and she provided the new number. (AR 33.) This contradicts Dr. Parayno’s testing that
21 allegedly showed that Plaintiff was disoriented and did not know the date, her home address, or
22 her own phone number. (AR 364.) Further, the ALJ noted that Plaintiff was able to testify at
23 times during the hearing in English. (AR 17.) Plaintiff also testified that she could understand a
24 little bit of English. (AR 35.)

25 The ALJ also pointed out that Dr. Parayno’s statement that Plaintiff had a disability or
26 impairment was vague. (AR 17.) Dr. Parayno did not provide any functional limitations. (AR
27 361-365.)

28 Although Plaintiff offers a different interpretation of the evidence, where the ALJ’s

1 interpretation is rational, it is not this Court's function to second guess the ALJ's conclusions and
2 substitute the Court's judgment for the ALJ's. See Burch, 400 F.3d at 679. Therefore, the Court
3 finds that the ALJ provided specific and legitimate reasons supported by substantial evidence for
4 giving little weight to Dr. Parayno's January 2013 opinion.

5 **b. July 2014 Opinion**

6 Dr. Parayno next provided an opinion in July 2014. (AR 390-391.) He found that
7 Plaintiff was unable to work. (AR 390.) He opined that she needed significant, frequent
8 assistance with her daily activities, she was unable to interact appropriately and communicate
9 effectively with coworkers, instructors, and members of the public, she was unable to complete
10 everyday tasks, and she was unable to adapt to stress related to work-like situations. (AR 391.)

11 The ALJ found:

12 In February 2014, Dr. Parayno completed a county form stating the claimant was
13 unable to work. He opined she needed help with her activities of daily living, was
14 unable to interact appropriately, unable to complete everyday tasks, and unable to
15 adapt to stress from work-like situations (Exhibit 8F). I give the February 2014
16 opinions of Dr. Parayno little weight because the claimant admitted to Dr. Wagner
17 that she was able to perform her own activities of daily living without assistance
18 (see Exhibit 5F). His statement that the claimant could not interact was refuted by
19 other evidence showing the claimant had friends, went to temple, and spent time
20 with her mother, her children, and a male friend (hearing transcript and Exhibit
21 4F). His statement that she could not perform everyday tasking was refuted by
22 the claimant's admission to Dr. Lewis that she cooked, did dishes, paid bills, and
23 did laundry (Exhibit 4F). The clinical notes from Dr. Surinder Dhillon showing
24 normal psychiatric behavior (Exhibit 7F, pp. 1 and 2) also refuted his opinions.

19 (AR 17-18.)

20 Plaintiff contends that it was error to reject Dr. Parayno's July 2014 opinion because of
21 Plaintiff's activities. She argues that a "holistic view of the record" does not reveal any
22 substantive contradictions between Dr. Parayno's opinion and Plaintiff's activities. Plaintiff also
23 asserts that the ALJ did not provide specific reasons for rejecting Dr. Parayno's opinion that
24 Plaintiff has a poor stress tolerance and she was unable to complete everyday workplace
25 routines. Defendant argues that the ALJ properly found that Dr. Parayno's opinion was
26 inconsistent with other evidence, including Plaintiff's daily activities and examination findings
27 by other physicians.

28 Dr. Parayno stated that Plaintiff needed significant, frequent assistance in daily activities.

1 (AR 391.) However, Plaintiff told consultative examiner, Dr. Roger Wagner, that she could
2 perform her own activities of daily living without assistance. (AR 17, 380.) Dr. Parayno's
3 statement that Plaintiff could not perform everyday tasks is contradicted by Plaintiff's statement
4 to Dr. Lewis that she cooked, washed dishes, did laundry, and paid her bills without any
5 reminders. (AR 17, 374.) Plaintiff is correct that she stated during the hearing that her children
6 helped with chores, her friend helped her pay her bills, and she microwaved her food. (AR 35,
7 41.) While Plaintiff stated at the hearing that her children do chores, she testified that she did
8 chores and they did other chores. (AR 35.) Plaintiff also stated multiple times in the record that
9 she cleans, does chores, and cooks. (AR 283-284, 374, 380.) Ms. Melissa Somtakoune indicated
10 in the third party function report that Plaintiff prepared meals if she wants and if she feels okay.
11 (AR 270.) Plaintiff also told Dr. Wagner that she drives and shops. (AR 380.) However,
12 Plaintiff stated in her function report that an Asian store helps her pay her bills and that most of
13 the time her friends help. (AR 285.)

14 When the Court reviews the record as a whole, the Court finds that there is substantial
15 evidence supporting the finding that Plaintiff's daily activities contradict Dr. Parayno's opinion.
16 Plaintiff is attempting to proffer an alternative reading of the record. Where the ALJ's
17 interpretation is rational and reasonable, it is not this Court's function to second guess the ALJ's
18 conclusions and substitute the Court's judgment for the ALJ's. See Burch, 400 F.3d at 679.
19 Therefore, the Court finds that the ALJ provided specific and legitimate reasons supported by
20 substantial evidence when she found that Dr. Parayno's opinion was contradicted by Plaintiff's
21 statement that she could perform her own activities of daily living without assistance and her
22 statement that she cooked, did dishes, paid her bills, and did laundry.

23 Dr. Parayno stated that Plaintiff was unable to interact appropriately or effectively with
24 coworkers and members of the public. (AR 391.) However, the ALJ found this was inconsistent
25 with Plaintiff having friends, going to temple, and spending time with her mother, her children,
26 and a male friend. (AR 17, 35, 41, 374.) Plaintiff contends that she can only occasionally
27 socialize and that occasional socializing does not contradict Dr. Parayno's opinion.

28 In Ghanim, the Ninth Circuit found that there was no inconsistency between a physician's

1 opinion and the plaintiff's daily activities after considering a holistic review of the record.
2 Ghanim, 763 F.3d at 1162. There, while the plaintiff could perform some basic chores and
3 occasionally socialize, he relied heavily on his caretaker, struggled with social interactions, and
4 limited himself to low-stress environments. Id. Here, Plaintiff told Dr. Lewis that she had
5 several friends whom she has known for two years and is close to. (AR 374.) She told Dr.
6 Wagner that she shopped. (AR 380.) She testified at the hearing that she goes to church on the
7 weekend and visits with her mother. (AR 35-36.) In her function report, she indicated that her
8 friends help her pay her bills, she goes shopping for groceries with her friend once a week, and
9 she goes to Lao's temple. (AR 285-286.) Therefore, the Court finds that when considering the
10 record as a whole, substantial evidence supports the ALJ's finding that Dr. Parayno's opinion
11 regarding Plaintiff's socialization abilities is contradicted by Plaintiff's social activities.

12 The ALJ also rejected Dr. Parayno's July 2014 opinion because the clinic notes from Dr.
13 Dhillon showed normal psychiatric behavior. (AR 17-18.) Plaintiff asserts that the examination
14 was actually performed by a nurse practitioner at the beginning of Plaintiff's hospitalization in
15 February 2014. Plaintiff contends that the examination was not to assess Plaintiff's mental
16 functioning, but rather to determine whether Plaintiff was medically stable.

17 The February 19, 2014 examination was conducted by Nurse Practitioner ("NP") Cecil
18 Litiema. (AR 385-386.) However, the Court notes that Dr. Dhillon cosigned the patient note.
19 (AR 385-386.) NP Litiema noted that Plaintiff was admitted on 5150 because she was a danger
20 to herself. (AR 385.) During the review of Plaintiff's systems, Plaintiff stated that she had an
21 altered mental status, depression, hallucinations, and suicidal ideas. (AR 385.) During the
22 psychiatric portion of the physical examination, NP Litiema found that Plaintiff's behavior was
23 normal. (AR 386.) NP Litiema stated in the plan section that Plaintiff was medically stable and
24 that she would have therapy per psychiatry. (AR 386.) Although NP Litiema is not a
25 psychiatrist and is not a doctor, she is able to comment on Plaintiff's psychiatric behavior during
26 an examination that she conducted. Therefore, NP Litiema's observation that Plaintiff had
27 normal psychiatric behavior may be considered by the ALJ when determining what weight to
28 give medical opinions. The Court finds that the NP Litiema's observation that Plaintiff had

1 normal psychiatric behavior is a specific and legitimate reason to reject Dr. Parayno’s July 2014
2 opinion.

3 Although Plaintiff asserts that the ALJ did not address Dr. Parayno’s opinion that
4 Plaintiff was unable to complete everyday tasks and unable to adapt to stress from work-like
5 situations, the ALJ provided specific and legitimate reasons supported by substantial evidence
6 for giving little weight to the July 2014 opinion. Thus, the Court finds that the ALJ did not err
7 in giving little weight to Dr. Parayno’s July 2014 opinion.

8 **c. February 2015 Opinion**

9 In February 2015, Dr. Parayno conducted a psychiatric evaluation of Plaintiff. (AR 402-
10 405.) During the mental status examination, Plaintiff was alert, pleasant, and cooperative, had
11 fair grooming, and was tentatively oriented. (AR 404.) She had impaired concentration and
12 attention span, impaired remote memory, and impaired recent memory. (AR 404.) She did not
13 give an appropriate abstract answer to a question and she had impaired social judgment. (AR
14 404.) Her mood was “definitely depressed,” her affect was blunted, and her judgment and
15 insight were minimal. (AR 404-405.) He opined that she appears to have restricted activities of
16 daily living and that she seems to have a constricted social life. (AR 405.) He stated that “[s]he
17 has never been involved in any substantial gainful activities and with his multiple medical
18 problems and mental disabilities, it is apparent she is unable to work.” (AR 405.)

19 The ALJ found:

20 I give the February “2105” opinions of Dr. Parayno little weight. First, as
21 discussed above, Dr. Parayno already demonstrated opinions that were not
22 consistent with the medical records or that were refuted by other evidence,
23 including the claimant’s own admission as to her activities. Second, his vague
24 statements that claimant “appeared” to have restrictions in activities of daily
25 living or “seemed” to have a constricted social life suggested a lack of certainty.
26 His statement that the claimant had never engaged in substantial gainful activity
27 was refuted by the earnings records showing the claimant had earnings as high as
28 \$27,136.74 in 2010 and had many other years of substantial gainful activity
(Exhibit 7D). His opinion that the claimant could not work invaded an issue
reserved to the Commissioner (SSR 96-5p). In short, the records suggested Dr.
Parayno was either misinformed or inattentive. For these reasons, I give his
opinions little weight.

(AR 18.)

Plaintiff argues that this opinion was not vague, that the mistake regarding Plaintiff’s

1 substantial activities is only a mistake about Plaintiff's background, and that the fact the opinion
2 was on an issue reserved to the Commissioner is not a proper reason to reject it. Defendant
3 asserts that the ALJ properly gave the opinion little weight as it was inconsistent with the other
4 evidence.

5 Plaintiff is correct that the fact that Dr. Parayno's opinion is on a matter reserved for the
6 Commissioner is in itself not a specific and legitimate reason to reject the opinion. See Ghanim,
7 763 F.3d at 1161. Therefore, the Court reviews the other reasons to determine whether the ALJ
8 provided specific and legitimate reasons supported by substantial evidence for rejecting Dr.
9 Parayno's February 2015 opinion.

10 In Dr. Parayno's opinion, he used "appears" and "seems," which indicate a lack of
11 certainty regarding Plaintiff's activities of daily living and social life. (AR 405.) Plaintiff
12 contends that the ALJ failed to mention that Dr. Parayno also opined that it was apparent that
13 Plaintiff could not work. However, the fact that Dr. Parayno opined that it is apparent that
14 Plaintiff is unable to work does not change the vagueness of the statements regarding activities
15 of daily living and social life. These two statements regarding Plaintiff's activities of daily living
16 and social life are vague and suggest a lack of certainty, as the ALJ found. Plaintiff contends
17 that any vagueness is compensated for because the statements are consistent with Dr. Parayno's
18 prior opinions and the Global Assessment of Functioning ("GAF") scores by Dr. Gorelik and Dr.
19 Castillo. As the ALJ found, Dr. Parayno's prior opinions were not consistent with the medical
20 records or were refuted by other evidence. (AR 18.) As discussed above, the ALJ gave specific
21 and legitimate reasons supported by substantial evidence for giving little weight to Dr. Parayno's
22 January 2013 and July 2014 opinions. Even if GAF scores by other doctors are consistent with
23 this February 2015 opinion, it does not change the fact that the opinion is vague and the opinion
24 itself indicates a lack of certainty. The ALJ's finding that Dr. Parayno's statements regarding
25 Plaintiff's activities of daily living and social life are vague is a specific and legitimate reason to
26 reject the opinion.

27 Plaintiff asserts that Dr. Parayno made a mistake of fact regarding Plaintiff's background
28 when he said that Plaintiff had never engaged in any substantial activities. Plaintiff contends that

1 this does not contradict Dr. Parayno’s actual observations and the opinion. However, as the ALJ
2 pointed out, this contradiction suggests that Dr. Parayno was misinformed or inattentive. (AR
3 18.) Dr. Parayno’s statement that it is apparent Plaintiff is unable to work is connected to his
4 statement that Plaintiff has never been involved in any substantial gainful activities. (AR 405.)
5 If Dr. Parayno was aware that Plaintiff had performed substantial gainful activities for a number
6 of years, he could change his opinion of her ability to work. The fact that Dr. Parayno was
7 misinformed or inattentive regarding Plaintiff’s substantial gainful activity calls into question his
8 opinion. Therefore, the Court finds the fact that Dr. Parayno was misinformed or inattentive is a
9 specific and legitimate reason for giving his opinion little weight. Accordingly, the Court finds
10 that the ALJ did not err in giving little weight to Dr. Parayno’s February 2015 opinion.

11 2. GAF Scores Opined by Dr. Castillo and Dr. Gorelik

12 Plaintiff asserts that Dr. Castillo and Dr. Gorelik’s GAF scores are opinions that the ALJ
13 was required to accept or reject. “A Global Assessment of Functioning (“GAF”) score is the
14 clinician’s judgment of the individual’s overall level of functioning. It is rated with respect only
15 to psychological, social, and occupational functioning, without regard to impairments in
16 functioning due to physical or environmental limitations.” Cornelison v. Astrue, ED CV 11-440-
17 PLA, 2011 WL 6001698, at *4 n.6 (C.D. Cal. Nov. 30, 2011) (citing American Psychiatric
18 Association, Diagnostic and Statistical Manual of Mental Disorders (“DSM–IV”), at 32 (4th ed.
19 2000)).

20 Both Dr. Castillo and Dr. Gorelik assessed Plaintiff with a GAF score of 50. GAF scores
21 between 41 and 50 indicate serious symptoms or any serious impairment in social, occupational,
22 or school functioning. Garrison v. Colvin, 759 F.3d 995, 1003 n.4 (9th Cir. 2014); see also
23 Vanbibber v. Carolyn, No. C13-546-RAJ, 2014 WL 29665, at *1 (W.D. Wash. Jan. 3, 2014)
24 (quoting DSM-IV at 32) (a GAF range of 41–50 reflects “[s]erious symptoms (e.g., suicidal
25 ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social,
26 occupational, or school functioning (e.g., no friends, unable to keep a job).”).

27 Plaintiff points to an Administrative message that “[W]e consider a GAF rating as
28 opinion evidence.” SSA Administrative Message 13066 (effective July 22, 2013). Plaintiff also

1 cites to an unpublished Ninth Circuit opinion, Craig v. Colvin, which stated, “[a]lthough GAF
2 scores alone do not measure a patient’s ability to function in a work setting, the Social Security
3 Administration (SSA) has endorsed their use as evidence of mental functioning for a disability
4 analysis.” 659 F.App’x 381, 382 (9th Cir. 2016) (unpublished)⁷ (internal citations omitted). In
5 that case, the Ninth Circuit held that the ALJ did not err by relying in part on GAF scores. Id.
6 However, the Ninth Circuit did not say that failing to address GAF scores is error.

7 In fact, the Ninth Circuit has stated in other unpublished opinions that an ALJ did not err
8 by failing to address a doctor’s GAF score. Hughes v. Colvin, 599 F.App’x 765, 766 (9th Cir.
9 2015) (unpublished); McFarland v. Astrue, 288 F.App’x 357, 359 (9th Cir. 2008) (unpublished).
10 “The Commissioner has determined the GAF scale ‘does not have a direct correlation to the
11 severity requirements in [the Social Security Administration’s] mental disorders listings.’ ”
12 McFarland, 288 F.App’x at 359 (quoting 65 Fed.Reg. 50,746, 50,765 (Aug. 21, 2000)).
13 However, GAF scores are relevant and may be considered by the ALJ in considering the
14 claimant’s general functional abilities. Graham v. Astrue, 385 F.App’x 704, 706 (9th Cir. 2010).

15 Therefore, while an ALJ may consider a GAF score in considering a claimant’s abilities,
16 an ALJ does not need to accept or reject a GAF score. Thus, the Court finds that the ALJ did not
17 err by not accepting or rejecting the GAF scores rendered by Dr. Castillo and Dr. Gorelik.

18 3. ALJ’s Finding that Plaintiff Could Perform Simple Routine Tasks

19 Plaintiff asserts that the ALJ’s finding that Plaintiff had the RFC to perform simple
20 routine tasks is unsupported by any psychiatric opinion of record. Plaintiff contends that the ALJ
21 impermissibly provided a lay interpretation of the evidence. Defendant counters that the ALJ
22 properly performed her function as factfinder.⁸

23 _____
24 ⁷ Unpublished dispositions and orders of this Court issued on or after January 1, 2007 may be cited to the courts of
25 this circuit in accordance with FRAP 32.1. Ninth Circuit Rule 36-3(b); see Animal Legal Def. Fund v. Veneman,
490 F.3d 725, 733 (9th Cir. 2007) (“as of January 1, 2007, we must now allow parties to cite even unpublished
dispositions and unpublished orders as persuasive authority”).

26 ⁸ The Court notes that Plaintiff mentions for the first time in her reply brief that the consultative examiner and the
27 state agency physicians did not review the records of Plaintiff’s inpatient hospitalizations. Plaintiff does not appear
28 to be arguing that this was error by the ALJ. To the extent she is arguing that the ALJ erred because the consultative
examiner and state agency physicians did not review the records of Plaintiff’s inpatient hospitalizations, the Court
finds Plaintiff has waived this argument as she did not raise it in her opening brief.

1 It is error for the ALJ to define her own limitations for a plaintiff. See Day v.
2 Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975) (the ALJ was not qualified as a medical expert
3 and therefore could not permissibly go outside the record to consult medical textbooks for
4 purpose of making his own assessment of the claimant’s physical condition); Nguyen v. Chater,
5 172 F.3d 31, 35 (1st Cir. 1999) (“As a lay person, ... the ALJ was simply not qualified to
6 interpret raw medical data in functional terms and no medical opinion supported the
7 determination.”); Rohan v. Chater, 98 F.3d 966, 970 (7th Cir. 1996) (“ALJs must not succumb to
8 the temptation to play doctor and make their own independent medical findings.”). The ALJ is
9 to determine credibility, resolve conflicts in testimony, and resolve ambiguities; however his
10 findings must be supported with specific and rational reasons. Reddick v. Chater, 157 F.3d 715,
11 722 (9th Cir. 1998).

12 Plaintiff is correct that no doctor specifically opined that she is limited to simple, routine
13 tasks. However, three doctors opined that she does not have a severe mental impairment, which
14 is less restrictive than the RFC that the ALJ found. (AR 19, 61, 72, 83-85, 95-96, 370-375.) Dr.
15 Lewis stated that Plaintiff did not appear to be suffering from a major mental disorder and she
16 appeared to be functioning adequately. (AR 19.) Dr. Cory Brown, PsyD, an agency reviewing
17 physician, opined that Plaintiff’s mental impairment is not severe. (AR 61, 72.) Another agency
18 reviewing physician, Dr. Richard Kaspar, PhD, affirmed Dr. Brown’s opinion. (AR 85, 96.)

19 The ALJ gave limited weight to Dr. Lewis’s opinion because her GAF score of 60
20 suggested some moderate limitations and she did not explain the discrepancy between the GAF
21 score and her opinion that Plaintiff had no significant mental limitation. (AR 19.) The ALJ gave
22 the opinions of Dr. Brown and Dr. Kaspar little weight because they overly relied on Dr. Lewis’s
23 opinion. (AR 19.) The ALJ also found that “the records showing [Plaintiff] had some mental
24 health treatment and at least two involuntary psychiatric hospitalizations support limiting
25 [Plaintiff] to simple routine tasks.” (AR 19.)

26 Therefore, the ALJ considered the medical evidence and the opinions in the record when
27 deciding Plaintiff’s RFC. The ALJ determined that the opinions of Dr. Lewis, Dr. Kaspar, and
28 Dr. Brown were not restrictive enough and based on Plaintiff’s mental health treatment and two

1 involuntary psychiatric hospitalizations, the ALJ restricted Plaintiff to simple routine tasks. This
2 is not a situation where the ALJ found an RFC that is less restrictive than all of the doctors'
3 opinions. The ALJ did not impermissibly substitute her lay opinion. Thus, the Court finds that
4 the ALJ did not err in formulating Plaintiff's RFC for her mental impairments.

5 **V.**

6 **CONCLUSION AND ORDER**

7 Based on the foregoing, the Court finds that the ALJ did not err in finding that Plaintiff
8 can communicate in English and in her evaluation of Plaintiff's mental impairments.

9 Accordingly, IT IS HEREBY ORDERED that Plaintiff's appeal from the decision of the
10 Commissioner of Social Security is DENIED. It is FURTHER ORDERED that judgment be
11 entered in favor of Defendant Commissioner of Social Security and against Plaintiff Nantha
12 Vongphachanh. The Clerk of the Court is directed to CLOSE this action.

13 IT IS SO ORDERED.

14 Dated: March 14, 2018

15 
16 _____
17 UNITED STATES MAGISTRATE JUDGE