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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

REBECCA BRADLEY,

Petitioner,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Respondent.

No. 1:17-cv-01322-GSA

**ORDER DIRECTING ENTRY OF
JUDGMENT IN FAVOR OF
COMMISSIONER OF SOCIAL SECURITY
AND AGAINST PLAINTIFF**

I. Introduction

Plaintiff Rebecca Bradley (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for disability insurance benefits pursuant to Title II and supplemental security income under Title XVI of the Social Security Act. The matter is currently before the Court on the parties’ briefs which were submitted without oral argument to the Honorable Gary S. Austin, United States Magistrate Judge.¹ *See* Docs. 15, 18 and 19. Having reviewed the record as a whole, the Court finds that the ALJ’s decision is supported by substantial evidence and complies with applicable law. Accordingly, Plaintiff’s appeal is denied.

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¹ The parties consented to the jurisdiction of the United States Magistrate Judge. *See* Docs. 7 and 8.

1 **II. Procedural Background**

2 On August 11, 2014, Plaintiff filed an application for disability insurance benefits under
3 Title II of the Social Security Act. AR 17. The following day she filed a Title XVI application
4 for supplemental security income. AR 17. In both applications, Plaintiff alleged disability
5 beginning August 5, 2014. AR 17. The Commissioner denied the applications initially on
6 January 16, 2015, and upon reconsideration on March 13, 2015. AR 17. On March 16, 2015,
7 Plaintiff filed a timely request for a hearing before an Administrative Law Judge. AR 17.

8 Administrative Law Judge Robert Milton Erickson presided over an administrative
9 hearing on April 14, 2016. AR 34-72. Plaintiff, represented by counsel, appeared and testified.
10 AR 34. Impartial vocational expert Cathleen Spencer (the “VE”) testified by telephone. AR 34.

11 On June 9, 2016, the ALJ denied Plaintiff’s application. AR 17-29. The Appeals Council
12 denied review on August 15, 2017. AR 1-3. On October 2, 2017, Plaintiff filed a complaint in
13 this Court. Doc. 1.

14 **III. Factual Background**

15 **A. Plaintiff’s Testimony and Report**

16 **1. Hearing Testimony**

17 Plaintiff (born September 18, 1962) had been working for Xerox for eight years when she
18 began to experience difficulties at work. AR 58. Plaintiff explained that for three months
19 “Nobody wanted to help me on the job, None of the supervisors. Nobody was talking to me.”
20 AR 58. In August 2014, Plaintiff’s employers advised her that she was no longer performing
21 adequately on the job. AR 57. However, Xerox did not fire Plaintiff. AR 57. Plaintiff
22 explained:

23 I had spent eight years doing everything they had asked me to do.
24 Any schooling they sent me to. I worked any overtime. I did
25 anything they asked me to without pay, and after doing this for eight
26 years. The next day, when I was going to work, I just had, I just got
27 fed up and I gave up Christmases, I gave up holidays with my family
28 and all I did was work. I didn’t do anything else. I gave up family
 and everything to work for them. So the next day, I just thought if I
 just got in my car and wrecked my car, I could just, I wouldn’t have
 to go back there and I just wouldn’t have to deal with anything
 anymore.

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I didn't know what happened to me, but I just, just couldn't take it anymore and I just didn't see how they could do this to me.

AR 57.

Thereafter, Plaintiff was hospitalized for psychiatric treatment. AR 40.

When Plaintiff was released from the hospital she was unable to afford private psychiatric care and received treatment from county mental health services. AR 61. Her treatment included psychiatric medications, therapy and counseling. AR 59. She had been seeing the same therapist for the six months just before the administrative hearing. AR 61.

Although she retained her driver's license, Plaintiff last drove a car six months before the administrative hearing. AR 40-41. She depended on her friend or sister to drive her. AR 59. When she attempted to drive, or rode in a car with another driver, Plaintiff experienced panic attacks and wanted to escape the car. AR 41-42. Plaintiff also panicked on buses, and a goal of her therapy was to enable her to get on a bus. AR 60.

Plaintiff was reluctant to talk to anyone other than her daughter. AR 59. She did not socialize or participate in activities outside her home, such as going to the movies. AR 59. Plaintiff had little contact with her children. AR 43. Although she texted with her daughter, she argued with her son who refused to allow her to visit her grandchildren. AR 43.

Some days Plaintiff was unable to get out of bed or leave the house. AR 60. She forgot to take her medicine, shower and eat. AR 60-61. She picked at her skin until she bled. AR 61. Plaintiff had stopped consuming alcoholic beverages since using alcohol interfered with her medications. AR 62.

At the time of the administrative hearing, Plaintiff lived in an apartment with a former boyfriend. AR 43. Her boyfriend let her move into a spare bedroom because she had nowhere else to go. AR 43. She was too tired to help him with household chores. AR 44. She sometimes accompanied her roommate to the grocery store but left quickly if the store was crowded or noisy. AR 46.

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2. Pain Questionnaire

In a pain questionnaire completed August 29, 2014, Plaintiff reported that for the past four years she had experienced fibromyalgia pain which she described as muscle stiffness and tender joints. AR 237. The pain was always present and was brought on by stress, exhaustion, fatigue, sleep disorder, depression and anxiety. AR 237. Plaintiff required a sleeping pill to rest and took amitriptyline HCl for pain.² AR 237. Medication did not fully relieve her pain and made her drowsy and unable to concentrate. AR 237-38.

3. Adult Function Report

Plaintiff's fibromyalgia caused very painful joints throughout her body with resulting depression, anxiety and fatigue. AR 240, 243. She had difficulty sleeping at night, slept about four hours during the day, and lacked the energy to drive or eat much. AR 241. Plaintiff did no household chores. AR 242. She had difficulty managing her finances. AR 243. Her impairments affected her ability to lift, squat, bend, stand, reach, walk, kneel, talk, climb stairs, remember, complete tasks, concentrate, understand, follow instructions, use her hands and get along with others. AR 245. She was unable to handle stress and change. AR 246. Authority figures did not understand her pain. AR 246. Plaintiff's medications included Topiramate, Zoloft, and amitriptyline HCl.³

B. Mental Health Treatment

On August 7, 2014, Plaintiff was voluntarily admitted to the adult psychiatric unit at Good Samaritan Hospital, Bakersfield, California. AR 283. She reported having had suicidal ideation for the past three weeks and was unable to contract for safety.⁴ AR 283. Her insight and

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² Amitriptyline Hydrochloride is a tricyclic antidepressant with anticholinergic and sedative properties. www.pubchem.ncbi.nlm.nih.gov/compound/Amitriptyline_hydrochloride (accessed February 12, 2019).

³ Topiramate is used to prevent various types of seizures and to relieve the pain of migraine headaches. www.medlineplus.gov/druginfo/meds/a697012.html (accessed February 12, 2019). Zoloft (sertraline) is an antidepressant used to treat depression, obsessive-compulsive disorder, panic attacks, posttraumatic stress disorder, and social anxiety disorder. www.medlineplus.gov/druginfo/meds/a697048.html (accessed February 12, 2019).

⁴ "The contract for safety is a procedure used in the management of suicidal patients." Garvey, Keelin A. *et al*, "Contracting for Safety With Patients: Clinical Practice and Forensic Implications," J. Amer. Acad. Psych. & Law Online, vol. 37, No. 3 at 363-70 (Sept. 2009), reproduced at jaapl.org/content/37/3/363.long (accessed February 26, 2019). Also known as a no-suicide agreement, the contract for safety is used to assess suicidality and determine level of care. *Id.*

1 judgment were poor. AR 283. She did not initially disclose her suicide plan, which was later
2 identified as crashing her car. AR 283. Her diagnosis at admission was:

3 Axis I: 1. Major depressive disorder.
4 2. Rule out posttraumatic stress disorder.
5 Axis II: Deferred
6 Axis III: Fibromyalgia, migraine, and C-section 32 years ago.
7 Axis IV: Severe.
8 Axis V: GAF 20.

9 AR 283.⁵

10 By August 10, 2014, Plaintiff was alert and oriented with improving mood and congruent
11 affect, normal speech, linear thought process and acceptable sleep and appetite. AR 284. She
12 was able to contract for safety. AR 284. Her discharge diagnosis was:

13 Axis I: 1. Major depressive disorder.
14 2. Rule out posttraumatic stress disorder.
15 Axis II: Deferred
16 Axis III: Fibromyalgia, migraine, C-section 32 years ago, leukopenia,
17 hyperglycemia, and hypoglobulinemia.
18 Axis IV: Severe.
19 Axis V: GAF 40.

20 AR 284.⁶

21 On August 14, 2014, Plaintiff had an initial appointment with psychiatrist Krishna
22 Vijayasarathi, D.O., at Truxton Psychiatric Medical Group. AR 300-01. Dr. Vijayasarathi noted
23 that although Plaintiff was more cheerful after hospitalization, she was still depressed and was not
24 sleeping well. AR 300. Plaintiff denied current suicidal ideation. AR 300. The doctor
25 prescribed Zoloft, Klonopin⁷ and Restoril,⁸ and entered the following diagnosis:

26 ⁵ The Global Assessment of Functioning (GAF) scale is a rating from 0 to 100 and considers psychological, social,
27 and occupational functioning on a hypothetical continuum of mental health-illness. *Diagnostic and Statistical*
28 *Manual of Mental Disorders*, 32-35 (4th ed. American Psychiatric Association 1994). A GAF of 11-20 corresponds
to some danger of hurting self or others (e.g., suicide attempts without clear expectation of death; frequently violent;
manic excitement) or occasionally fails to maintain minimal personal hygiene (e.g., smears feces or gross impairment
in communication (e.g., largely incoherent or mute). *Id.*

⁶ A GAF of 31-40 corresponds to some impairment in reality testing or communication (e.g., speech is at times
illogical, obscure, or irrelevant) or major impairment in several areas, such as work or school, family relations,
judgment, thinking, or mood (e.g., depressed man avoids friends, neglects family and is unable to work; child
frequently beats up younger children, is defiant at home, and is failing at school). *Id.*

⁷ Klonopin is used alone or in combination with other medications to control certain types of seizures and to relieve
panic attacks. www.medlineplus.gov/druginfo/meds/a682279.html (accessed February 12, 2019).

⁸ Restoril is used on a short-term basis to treat insomnia. www.medlineplus.gov/druginfo/meds/a684003.html
(accessed February 12, 2019).

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2 Axis I: Major depressive disorder.
3 Generalized anxiety disorder social anxiety.
4 Axis II: Deferred
5 Axis III: Fibromyalgia, migraines.
6 Axis IV: Moderate
7 Axis V: GAF 60.

8 AR 301.⁹

9 On August 21, 2014, psychiatrist Iyengar Malini, M.D., saw Plaintiff at Truxton
10 Psychiatric Medical Group. AR 299. Plaintiff reported anxiety when she went out anywhere.
11 AR 229. When Plaintiff reported that Restoril was not helping her sleep, Dr. Malini suggested
12 that she try taking Benadryl at bedtime. AR 299. Although Plaintiff denied suicidal thoughts, the
13 doctor observed depressed and flat affect with social anxiety and tears. AR 299. Dr. Malini
14 recommended counselling in addition to medications. AR 299.

15 When Plaintiff met with Dr. Malini on September 4, 2014, Plaintiff was still isolating
16 herself and not driving. AR 298. She continued to have bad dreams. AR 298. Plaintiff was
17 anxious with blunt affect. AR 298. Dr. Malini increased Plaintiff's Zoloft prescription and again
18 encouraged her to see a counselor. AR 298.

19 Plaintiff's condition was little changed when she next saw Dr. Malini on September 25,
20 2014. AR 297. Dr. Malini added a prescription for Abilify.¹⁰ AR 297.

21 On October 8, 2014, Plaintiff had not yet taken Abilify, reporting that she forgot. AR 296.
22 She was frustrated and tired and reported that talking to people at work made her angry. AR 296.
23 She had not begun counselling. AR 296.

24 On October 17, 2014, Plaintiff began medication management with psychotherapy with
25 Asarulislam Syed, M.D., at Omni Family Health. AR 332-34. Dr. Syed described the history of
26 Plaintiff's illness as follows:

27 ⁹ A GAF score from 61-70 indicates some mild symptoms (e.g., depressed mood and mild insomnia) or some
28 difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), but
generally functioning pretty well, has some meaningful interpersonal relationships. *Diagnostic and Statistical
Manual of Mental Disorders* at 32-35.

¹⁰ Among other uses, Abilify (aripiprazole), an atypical antipsychotic, is prescribed to treat depression when anti-
depressive medications alone have not controlled symptoms. www.medlineplus.gov/druginfo/meds/a6033012.html
(accessed February 12, 2019).

1 The symptoms are reported as being moderate. The symptoms occur
2 constantly. PATIENT reports doing POORLY ON current regimen.
3 COMPLAINS OF AUDITORY HALLUCINATIONS. NO
4 Akathisia noted. Patient has below average grooming, is passively
5 interactive, exhibits some apathy and has passive and indifferent
6 attitude. Speech is of a normal rate and tone. Thought processes
7 show some thought blocking but are fairly goal directed.
8 Ambivalence noted. Is passively communicative and shows little
9 spontaneity. There is obvious thought blocking and some
10 distractibility is noted. There is no flight of ideas or loosening of
11 associations. Thought content reveals no delusions. There is a
12 marked poverty of thought content. Has a past history of Auditory
13 Hallucinations. No command hallucinations present. There is no
14 evidence of any grandiosity. No evidence if any morbid
15 preoccupation. Cognition is fairly intact. Working memory, GOOD.

16 AR 332.

17 Dr. Syed diagnosed schizoaffective disorder and generalized anxiety disorder and stated that her
18 current GAF was 50.¹¹ AR 333.

19 On December 5, 2014, Plaintiff complained of depression and irritability on most days.
20 AR 327. Rapid mood changes impaired occupational functioning and interpersonal relationships.
21 AR 327. Dr. Syed added a diagnosis of insomnia due to mental disorder. AR 328.

22 On January 12, 2015, Dr. Syed opined that Plaintiff was doing poorly on the current
23 regimen. AR 324. She complained of Akathisia and had stopped Risperdal, but Dr. Syed
24 observed no involuntary movements during the exam. AR 324. Plaintiff's grooming was again
25 below average, and she was passively interactive with a passive and indifferent attitude. AR 324.
26 The doctor observed ambivalence, passive communication, little spontaneity, obvious thought
27 blocking and distractibility. AR 324. Dr. Syed discontinued Plaintiff's Risperdal prescription
28 and added Geodon,¹² trazodone¹³ and temazepam.¹⁴ AR 325.

On March 3, 2015, Plaintiff began individual psychotherapy sessions with Sara Thomas
Chandler, L.C.S.W., with the goal of learning to recognize, accept and cope with her depression.

¹¹ A GAF of 41-50 corresponds to serious symptoms or any serious impairment in social, occupational, or school functioning. *Diagnostic and Statistical Manual of Mental Disorders* at 32-35.

¹² Geodon (Ziprasidone) is an atypical antipsychotic used to treat symptoms of schizophrenia and bipolar disorder. www.medlineplus.gov/druginfo/meds/a699062.html (accessed February 12, 2019).

¹³ Trazodone is an antidepressant. www.medlineplus.gov/druginfo/meds/a681038.html (accessed February 19, 2019).

¹⁴ Temazepam is prescribed on a short-term basis for insomnia. www.medlineplus.gov/druginfo/meds/a684003.html (accessed February 19, 2019).

1 AR 417-22. Plaintiff also sought to handle her anger more effectively. AR 419. She reported
2 poor relations with family members because she always tells the truth. AR 419. Plaintiff told
3 Ms. Chandler that she did not want to find work. AR 420.

4 On March 6, 2015, Plaintiff told Dr. Syed that she was experiencing depression and
5 irritable mood on most days with rapid mood changes that disturbed occupational functioning and
6 interpersonal relationships. AR 414. Sleep and appetite remained poor. AR 414.

7 When she saw Dr. Syed on April 20, 2015, Plaintiff reported severe symptoms. AR 411.
8 Her issues included polypharmacy and doctor shopping. AR 411. She was accompanied by a
9 male friend who had good insight and sought to help Plaintiff. AR 411.

10 On May 5, 2015, Plaintiff again saw Ms. Chandler. AR 408-10. On June 2 and August
11 3, 2015, Plaintiff reported moderate symptoms to Dr. Syed. AR 402-07.

12 Although Plaintiff's October 1, 2015, session with Ms. Chandler was to focus on
13 improving the symptoms of anxiety and schizoaffective disorder that were impairing Plaintiff's
14 daily functioning, Plaintiff reported that she visited her son and daughter-in-law in Los Angeles,
15 who called police. AR 399. The session focused on Plaintiff's lack of understanding why she
16 was asked to leave her son's home. AR 399. Ms. Chandler noted no significant change in
17 Plaintiff's symptoms, and that Plaintiff had no support network. AR 399-400.

18 On October 5, 2015, Plaintiff told Dr. Syed of recent arguments with the boyfriend with
19 whom she was living. AR 395. Her boyfriend was present at the session. AR 395. Plaintiff
20 complained that her boyfriend did not seem to understand her depression, anxiety and habit of
21 picking at her skin. AR 395. When Plaintiff next saw Dr. Syed on November 16, 2015, she had
22 moved from her boyfriend's home and begun living with her friend Charlene, who was present at
23 the appointment. AR 392.

24 On January 12, 2016, Ms. Chandler noted that after cohabitating for eight years, Plaintiff's
25 boyfriend had recently asked her to move out. AR 389. Plaintiff was sad and angry but feeling
26 better in new housing with a friend from church. AR 389. Plaintiff wanted to reconcile with her
27 son and see her grandchildren, but her son refused. AR 389.

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1 On February 29, 2016, Dr. Syed noted moderate anxiety and depression. AR 382.
2 Plaintiff had a fair ability to concentrate but was sad and low on most days with low energy level.
3 AR 382. Her sleep remained interrupted and not restful. AR 382.

4 Medical opinions of Plaintiff's mental residual functional capacity are included in Section
5 VII below.

6 C. Physical Medical Treatment and Opinions

7 On January 16, 2015, agency physician Judy Panek noted that Plaintiff's fibromyalgia
8 caused pain throughout her body including muscle stiffness and tender joints. AR 81. Dr. Panek
9 opined that Plaintiff retained the residual functional capacity to lift and carry twenty pounds
10 occasionally and ten pounds frequently; sit, stand and walk about six hours in an eight-hour day;
11 had unlimited ability to push and pull but with upward pulling limited to twenty pounds. AR 82.
12 Postural limitations included occasional stooping, kneeling, crouching, crawling and climbing
13 ramps, stairs, ladders, ropes or scaffolds. AR 82. Plaintiff could frequently balance and had no
14 manipulative, visual, or communicative limitations. AR 82. She should avoid concentrated
15 exposure to vibrations and hazards such as machinery and heights. AR 83. On reconsideration,
16 agency physician K. Quint, M.D., concurred with Dr. Panek's physical assessment. AR 119-22.

17 The administrative record also includes a medical consultative opinion from internist John
18 Sedgh, M.D., who addressed Plaintiff's allegations of fibromyalgia and bilateral hand, elbow and
19 foot pain. AR 309-14. A physical residual functional capacity questionnaire from Jonathan E.
20 Akannio, M.D., appears at AR 361-62. The record does not identify Dr. Akannio's professional
21 relationship, if any, with Plaintiff. Treatment notes for Plaintiff's physical impairments appear at
22 AR 363-78.

23 IV. Standard of Review

24 Pursuant to 42 U.S.C. §405(g), this court has the authority to review a decision by the
25 Commissioner denying a claimant disability benefits. "This court may set aside the
26 Commissioner's denial of disability insurance benefits when the ALJ's findings are based on
27 legal error or are not supported by substantial evidence in the record as a whole." *Tackett v.*
28 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999) (citations omitted). Substantial evidence is evidence

1 within the record that could lead a reasonable mind to accept a conclusion regarding disability
2 status. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971). It is more than a scintilla, but less
3 than a preponderance. *See Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996) (internal citation
4 omitted). When performing this analysis, the court must “consider the entire record as a whole
5 and may not affirm simply by isolating a specific quantum of supporting evidence.” *Robbins v.*
6 *Social Security Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (citations and internal quotation marks
7 omitted).

8 If the evidence reasonably could support two conclusions, the court “may not substitute its
9 judgment for that of the Commissioner” and must affirm the decision. *Jamerson v. Chater*, 112
10 F.3d 1064, 1066 (9th Cir. 1997) (citation omitted). “[T]he court will not reverse an ALJ’s
11 decision for harmless error, which exists when it is clear from the record that the ALJ’s error was
12 inconsequential to the ultimate nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d
13 1035, 1038 (9th Cir. 2008) (citations and internal quotation marks omitted).

14 **V. The Disability Standard**

15 To qualify for benefits under the Social Security Act, a plaintiff must
16 establish that he or she is unable to engage in substantial gainful
17 activity due to a medically determinable physical or mental
18 impairment that has lasted or can be expected to last for a continuous
19 period of not less than twelve months. 42 U.S.C. § 1382c(a)(3)(A).
20 An individual shall be considered to have a disability only if . . . his
21 physical or mental impairment or impairments are of such severity
22 that he is not only unable to do his previous work, but cannot,
23 considering his age, education, and work experience, engage in any
24 other kind of substantial gainful work which exists in the national
25 economy, regardless of whether such work exists in the immediate
26 area in which he lives, or whether a specific job vacancy exists for
27 him, or whether he would be hired if he applied for work.

28 42 U.S.C. §1382c(a)(3)(B).

To achieve uniformity in the decision-making process, the Commissioner has established
a sequential five-step process for evaluating a claimant’s alleged disability. 20 C.F.R. §§
416.920(a)-(f). The ALJ proceeds through the steps and stops upon reaching a dispositive finding
that the claimant is or is not disabled. 20 C.F.R. §§ 416.927, 416.929.

Specifically, the ALJ is required to determine: (1) whether a claimant engaged in
substantial gainful activity during the period of alleged disability, (2) whether the claimant had

1 medically determinable “severe impairments,” (3) whether these impairments meet or are
2 medically equivalent to one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P,
3 Appendix 1, (4) whether the claimant retained the residual functional capacity (“RFC”) to
4 perform his past relevant work, and (5) whether the claimant had the ability to perform other jobs
5 existing in significant numbers at the national and regional level. 20 C.F.R. § 416.920(a)-(f).

6 **VI. Summary of the ALJ’s Decision**

7 Using the Social Security Administration’s five-step sequential evaluation process, the
8 ALJ determined that Plaintiff did not meet the disability standard. AR 17-29. The ALJ found
9 that Plaintiff had not worked since the alleged onset date of August 5, 2014. AR 19. Plaintiff had
10 the following serious impairments: schizoaffective disorder, anxiety disorders and fibromyalgia.
11 AR 19. The severe impairments did not meet or medically equal one of the listed impairments in
12 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d); 404.1525; 404.1526;
13 416.920(d); 416.925; 416.926). AR 20.

14 The ALJ concluded that Plaintiff had the residual functional capacity to perform medium
15 work as defined in 20 C.F.R. §§ 404.1567(c) and 416.967(c) except that she is capable of simple
16 repetitive tasks, occasional detailed complex tasks, no high production goals and can maintain
17 concentration for a two-hour period. AR 21-22. Plaintiff was unable to perform any past relevant
18 work. AR 27. Transferability of skills was not an issue since Plaintiff, an individual closely
19 approaching advanced age, would be found not disabled under the Medical Vocational Rules (the
20 “grids”) whether or not she had transferable skills. AR 28. Claimant could perform jobs existing
21 in significant numbers in the national economy. AR 28. Accordingly, the ALJ found that
22 Plaintiff was not disabled from the alleged onset date of August 5, 2014, through June 9, 2015,
23 the date of the hearing decision. AR 29.

24 **VII. The ALJ Properly Evaluated the Medical Evidence**

25 Plaintiff contends that the ALJ erred in rejecting the opinions of the state agency
26 physicians in favor of the opinion of Dr. Riahinejad, an examining physician. The Commissioner
27 responds that the ALJ properly favored Dr. Riahinejad’s opinion which was consistent with the

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1 evidence as a whole. The Court concludes that the ALJ's analysis of psychological opinion was
2 not reversible error.

3 **A. Medical Opinions Concerning Plaintiff's Mental Impairments**

4 **1. Agency Physicians**

5 On January 12, 2015, agency psychologist Leif Leaf, Ph.D., identified Plaintiff's
6 medically determinable impairments as fibromyalgia, spinal disorders, anxiety disorders and
7 affective disorders. AR 79-80. Dr. Leaf conducted the psychiatric review technique and
8 determined that Plaintiff's mental health impairments resulted in mild restriction of activities of
9 daily living; moderate difficulties in maintaining social functioning; moderate difficulties in
10 maintaining concentration, persistence or pace; and, one or two episodes of decompensation, each
11 of extended duration. AR 79. He opined:

13 The claimant is limited for ADL's from her physical pain. She
14 completes self care and basic HH chores. She doesn't like being
15 around too many people. She can follow directions, and pay
attention for simple tasks.

16 The claimant was inpatient in 8/2014 for SI. She stabilized and
17 diagnosed with MDD. A 1/3/15 mental CE finds her alert, oriented
18 and cooperative. She is diagnosed with PTSD, Depression with a
GAF of 60. She was able to complete simple, routine tasks with
some limits for adapting to workplace stress.

19 AR 80.

20 In Dr. Leaf's opinion, Plaintiff was not significantly limited in the ability to remember
21 locations and work-like procedures; understand, remember and carry out very short and simple
22 instructions; perform activities within a schedule; maintain regular attendance and be punctual
23 within customary tolerance; sustain an ordinary routine without special supervision; make simple
24 work-related decisions; ask simple questions or request assistance; accept instructions and
25 respond appropriately to criticism from supervisors; get along with coworkers or peers without
26 distracting them or exhibiting behavioral extremes; maintain socially appropriate behavior;
27 adhere to basic standards of neatness and cleanliness; be aware of normal hazards and take
28 appropriate precautions; travel to unfamiliar places; use public transportation; set realistic goals;

1 and make plans independently of others. AR 84-85. Plaintiff had moderate limitations in her
2 ability to understand; remember and carry out detailed instructions; maintain attention and
3 concentration for long periods; work in coordination with or proximity to others without being
4 distracted by them; interact appropriately with the public; and, respond appropriately to changes
5 in the work setting. AR 84-854.

6 On reconsideration, agency psychologist Timothy Schumacher, Ph.D., concurred with Dr.
7 Leaf's mental assessment. AR 114-16.

8 **2. Psychiatric Consultative Opinion**

9 On January 3, 2015, psychologist Ahmad S. Riahinejad, Ph.D., conducted a consultative
10 examination for the state agency. AR 302-06. In addition to examining Plaintiff, Dr. Riahinejad
11 reviewed Plaintiff's adult disability report (SS Form 3868) and the discharge summary from
12 Good Samaritan Hospital. AR 303. He administered a mini mental status examination noting
13 that Plaintiff could not perform serial sevens but could perform serial threes, and could remember
14 one of three objects in five minutes, remain on topic in conversation and respond to questions
15 immediately. AR 304. Plaintiff could add and subtract but could not multiply and divide. AR
16 304. Her interpretation of proverbs was impaired. AR 304. Dr. Riahinejad diagnosed:

17 Axis I: Post traumatic stress disorder.
18 Depressive disorder with anxiety.
19 Axis II: No diagnosis.
20 Axis III: Fibromyalgia and migraine headaches, deferred to specialist.
21 Axis IV: Psychosocial stressors: moderate.
22 Axis V: GAF: 60.

23 AR 305.

24 The doctor opined that Plaintiff could handle funds on her own behalf. AR 305. She had
25 no limitations in her ability to follow simple and oral instructions; interact with the public,
26 coworkers and supervisors; comply with job rules such as safety and attendance; and, respond to
27 changes in a routine work setting. AR 305. Plaintiff's ability to focus and sustain attention was
28 mildly limited. AR 305. She was moderately limited in her ability to follow detailed instructions
and to respond to work pressure in a usual work setting. AR 305.

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3. Medical Source Statement (Mental)

Dr. Syed completed a medical source statement on March 7, 2016. AR 379-81. He opined that Plaintiff had extreme limitations in the ability to respond appropriately to work pressures in a usual work setting. AR 380. Plaintiff had marked difficulty in understanding, remembering and carrying out both short, simple instructions and detailed instructions, and in responding appropriately to changes in a routine setting. AR 379-80. She had moderate difficulty in the ability to make judgments on simple work-related decisions and to interact appropriately with the public, supervisors and co-workers. AR 379-80. To support his opinions, Dr. Syed referred the reader to his progress notes. AR 379-80.

B. The ALJ's Determination of Plaintiff's Residual Functional Capacity

At step three, the ALJ determined that Plaintiff's severe mental impairments, schizoaffective disorder and anxiety disorders, did not meet or medically equal the criteria of listings 12.04 or 12.06. AR 21. He found that Plaintiff had mild restriction in activities of daily living, no difficulties in social functioning, moderate difficulties in concentration, persistence and pace, and no episodes of decompensation which had been of extended duration. AR 21. Accordingly, Plaintiff could not satisfy the paragraph B criteria of the regulations, which require at least two marked restrictions of the first three categories or one marked restriction combined with repeated episodes of decompensation. AR 21. Nor did Plaintiff satisfy the paragraph c criteria of either listing. AR 21. The ALJ noted that the subsequent detailed analysis of Plaintiff's residual functional capacity would reflect the degree of limitation determined at step three. AR 21.

At step four, the ALJ determined that Plaintiff had the residual functional capacity to perform medium work as defined in 20 C.F.R. §§ 404.1567(c) and 416.967(c), except that she was capable of constant simple repetitive tasks, occasional detailed complex tasks, and no high production goals. AR 21-22. Plaintiff could maintain concentration for two hours. AR 22.

The ALJ began his analysis with a detailed review of the treatment notes included within the record before he concluded that despite her severe impairments, Plaintiff could perform a limited range of medium work. AR 22-25. The ALJ wrote:

1 Psychiatrically, the record makes some mention of depressed and
2 tearful mood, constricted affect, below average grooming,
3 anhedonia, passive and indifferent attitude, circumstantial thought
4 process, distractibility, some thought blocking, marked poverty of
5 thought content, some flight of ideas and loosening of associations,
6 interrupted sleep and non-restful sleep, poor appetite and low energy
7 level. Objective observations on mental status evaluation were
8 otherwise generally within normal limits, however, including good
9 eye contact, no flight of ideas or loosening of associations, full
10 orientation, well groomed, improving mood, normal affect and
11 speech, cooperative behavior, pleasant attitude, normal thought
12 content, goal-directed thought process, intact cognition, good
13 working memory, good concentration abilities, and fair
14 insight/judgment. She denied having suicidal thoughts,
15 hallucinations or paranoia.

16 AR 25 (citations to record omitted).

17 The ALJ also found that Plaintiff was capable of independent personal care, could prepare simple
18 meals, shop in stores and by phone, read, watch television, and travel in cars with others. AR 25.
19 Although Plaintiff was not always compliant with her doctors' directions and sometimes missed
20 or failed to make appointments, when appropriate medications were taken as directed, they were
21 effective in controlling Plaintiff's symptoms. AR 26.

22 The ALJ gave "full weight" to Dr. Riahinejad's diagnosis and consultative opinion
23 because Dr. Riahinejad had examined Plaintiff and articulated opinions that were consistent with
24 his clinical findings. AR 26. He wrote: "Dr. Riahinejad opined that the claimant's ability to
25 follow simple and oral instructions is not limited; ability to follow detailed instructions was
26 moderately limited; ability to interact with the public, coworkers and supervisors, comply with
27 job rules, respond to changes in a routine work setting were not limited; ability to respond to
28 work pressure in a usual work setting was moderately limited and ability to focus and sustain
attention was mildly limited." AR 26. The ALJ gave some weight to the opinions of the state
agency psychologists, Leif Leaf, Ph.D., and Timothy Schumacher, Ph.D., since they were
generally consistent with Dr. Riahinejad's opinions, but gave greater weight to Dr. Riahinejad's
opinion since he had examined Plaintiff. AR 27. In contrast, the ALJ gave "little weight to the
marked and extreme limitations given by Dr. Syed because they [we]re inconsistent with progress
notes that describe the claimant as being moderate." AR 26.

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1 **C. Applicable Law**

2 The ALJ’s analysis was generally consistent with law generally applicable when
3 analyzing medical opinions to determine a claimant’s residual functional capacity. The opinions
4 of treating physicians, examining physicians, and non-examining physicians are entitled to
5 varying weight in disability determinations. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).
6 Ordinarily, more weight is given to the opinion of a treating professional, who has a greater
7 opportunity to know and observe the patient as an individual. *Id.*; *Smolen v. Chater*, 80 F.3d
8 1273, 1285 (9th Cir. 1996). In this case, the ALJ gave little weight to Dr. Syed’s opinion since it
9 was not consistent with his treatment notes. Plaintiff does not challenge the ALJ’s assessment of
10 Dr. Syed’s opinion.

11 Plaintiff contends that the ALJ erred in favoring Dr. Riahinejad’s opinion over those of
12 the agency psychologists. However, her position on this point is contrary to generally applicable
13 law. The opinion of an examining physician is generally entitled to greater weight than the
14 opinion of a non-examining physician. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990). An
15 ALJ may reject an uncontradicted opinion of a treating or examining medical professional only
16 for clear and convincing reasons. *Lester*, 81 F.3d at 831.

17 In contrast, the opinion of a non-examining physician may constitute substantial evidence
18 when it is “consistent with independent clinical findings or other evidence in the record.” *Thomas*
19 *v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). Such independent reasons may include laboratory
20 test results, contrary reports from examining physicians, and Plaintiff’s testimony when it
21 conflicts with the treating physician’s opinion. *Lester*, 81 F.3d at 831, citing *Magallanes v.*
22 *Bowen*, 881 F.2d 747, 755 (9th Cir. 1989). In this regard the ALJ did not err in giving less weight
23 to the nonexamining psychologist’s opinions than that of the examining physician.

24 Nonetheless, Plaintiff contends that the ALJ should have concluded that the state agency
25 psychologists’ analysis was more consistent with later evidence. She emphasizes her limitations
26 in certain areas of the mini mental status exam, and contends that an opinion that she is capable of
27 simple tasks is ambiguous. As is always the case in an appeal of the Commissioner’s denial of
28 disability benefits, Plaintiff would construe the evidence differently than the ALJ. However, the

1 ALJ's analysis complied with the legal principles set forth above which guided his analysis of the
2 evidence in this case. Even if the evidence could arguably support Plaintiff's interpretations, the
3 Court may not substitute its judgment for that of the Commissioner. *Jamerson*, 112 F.3d at 1066.

4 **VIII. The ALJ Did Not Err at Step Five**

5 **A. The Parties' Contentions**

6 Relying on Social Security Ruling 82-41 and *Bray v. Comm'r of Soc. Sec. Admin.*, 554
7 F.3d 1219, 1225-26 (9th Cir. 2009), Plaintiff contended in her opening brief that the ALJ erred by
8 failing to identify Plaintiff's transferable skills at step five of the disability analysis. Doc. 15 at 8-
9 9. The Commissioner responded that the vocational expert's testimony appropriately tied
10 Plaintiff's residual functional capacity to a specific vocation preparation (SVP) level. Doc. 18 at
11 9-12. Because the parties' arguments failed to consider the Ninth Circuit Court's opinion in
12 *Barnes v. Berryhill*, 895 F.3d 702 (9th Cir. 2018), which under similar facts reversed an ALJ's
13 determination and remanded the case for further administrative proceedings to address Plaintiff's
14 transferable skills, the Court requested that the parties submit supplemental briefs addressing the
15 application, if any, of *Barnes* to this case. Doc. 21.

16 In her supplemental brief, Plaintiff contended that the ALJ was required to identify her
17 transferable skills as part of the analysis determining whether Plaintiff retained the ability to work
18 despite her non-exertional impairments. Doc. 22 at 4. Defendant countered that because Plaintiff
19 could no longer do her past relevant work, which was skilled, the ALJ appropriately concluded
20 that Plaintiff could perform the semi-skilled jobs identified by the vocational expert. Doc. 25 at
21 4. According to Defendant's construction of SSR 82-41, findings of transferability were
22 immaterial because "'transferability of work skills is at issue' only when transferability from past
23 work is the 'decisive' issue between the Grid[']s directing a finding of disabled or not disabled,
24 which occurs 'in only a relatively few instances.'" Doc. 25 at 5. The Court agrees with the
25 Commissioner's contentions.

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28 **B. Vocational Expert Testimony and the ALJ's Decision**

1 Vocational expert Cathleen Spencer identified Plaintiff's past relevant work as user
2 support analyst (DOT No. 032.262-010, SVP 7, DOT and performance at sedentary); user support
3 analyst supervisor (DOT No. 032.132-010, DOT at SVP 8, performed at SVP 6, DOT and
4 performance at sedentary); customer complaint clerk (DOT No. 241.367-014, SVP 5, DOT and
5 performance at sedentary); and apartment house manager (DOT No. 186.167-018, SVP 5, DOT at
6 light, performed at medium).¹⁵ AR 65-66. The first hypothetical question concerned an
7 individual with the same residual functional capacity as that eventually found for Plaintiff. AR
8 66-67. Ms. Spencer opined that the hypothetical person could not perform any of Plaintiff's past
9 relevant work because she was limited to occasional detailed and complex task duties. AR 67.
10 The hypothetical person could work as a receptionist (DOT No. 237.367-038, SVP 4, sedentary,
11 102,000 jobs available nationally); telephone solicitor (DOT No. 299.357-014, SVP 3, sedentary,
12 162,000 jobs available nationally); and general clerk (DOT No. 209.562-010, SVP 3, light,
13 49,000 jobs available nationally).¹⁶ AR 67.

14 In the hearing decision dated June 9, 2016, the ALJ adopted the vocational expert's
15 opinion that Plaintiff was unable to perform her past relevant work. AR 28. In conducting the
16 step five analysis, he found that Plaintiff was 51 years old on the alleged disability date placing
17 her in the category of an individual closely approaching advanced age. AR 28. She had a high
18 school education and was able to communicate in English. AR 28. The ALJ found that
19 "[transferability of job skills is not material to the determination of disability because using the
20 Medical-Vocational Rules as a framework supports a finding that the claimant is 'not disabled,'
21 whether or not the claimant has transferable job skills (See SSR 82-41 and 20 CFR Part 404,
22 Subpart P, Appendix 2)." AR 28. The ALJ concluded that jobs that Plaintiff could perform
23 existed in significant numbers in the national economy. AR 28-29.

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25 **C. The Step Five Analysis**

26 _____
27 ¹⁵ All of Plaintiff past relevant work was skilled. See S.S.R. 00-4p, 2000 WL 1898704 at * 3 (2000); *Migala v.*
Berryhill, 2018 WL 1989550 at *3, n. 1 (N.D. Cal. March 14, 2018) (No. 17-cv-00482-EDL).

28 ¹⁶ All of the exemplary available jobs were semi-skilled. See S.S.R. 00-4p, 2000 WL 1898704 at * 3 (2000); *Migala*,
2018 WL 1989550 at *3, n. 1.

1 At step five, the ALJ has the responsibility to determine a claimant's skills, levels of skills
2 and potential occupations to which skills from the claimant's past relevant work may be
3 transferred. SSR 82-41 at *4. The Social Security Administration introduced the Medical
4 Vocational Guidelines to reduce the need for a vocational expert to analyze the number of jobs
5 available to each claimant based on that claimant's physical ability, age, education and work
6 experience. *Heckler v. Campbell*, 461 U.S. 458, 461 (1983). The Grids direct a conclusion of
7 whether jobs requiring specific combinations of these four factors exist in significant numbers in
8 the national economy. *Id.* at 461-62. If the Grids determine that work exists for a claimant, the
9 claimant is not considered disabled. *Id.* at 462. Establishing Medical-Vocational Guidelines was
10 intended to promote uniformity and efficiency in a system sometimes criticized for its
11 inconsistent treatment of similarly situated claimants. *Id.* at 461.

12 Relying solely on the Grids is inappropriate, however, when the claimant has significant
13 non-exertional limitations. *Barnes*, 895 F.3d at 706. In the above-captioned case, the ALJ
14 found that because of Plaintiff's non-exertional limitations, the Grids served only as a framework
15 for further analysis of the effects of the non-exertional limitations. AR 28. As detailed above, the
16 parties disagree whether an ALJ was required to make findings and consider transferability of
17 skills. The Court concludes that the ALJ was not required to make specific findings about
18 Plaintiff's transferable skills because Plaintiff was not of advanced age and her non-exertional
19 findings were not so significant as to require deviation from the grid rules.

20 An ALJ may use the grids even when a claimant has both exertional and non-exertional
21 limitations, so long as the non-exertional limitations do not significantly impact the exertional
22 capabilities. *Bates v. Sullivan*, 894 F.2d 1059, 1063 (9th Cir. 1990), *overruled on other grounds*,
23 *Bunnell v. Sullivan*, 947 F.2d 341 (9th Cir. 1991); *Rogers v. Colvin*, 970 F.Supp.2d 1147, 1160-61
24 (W.D. Wash. 2013). "[T]he fact that a non-exertional limitation is alleged does not automatically
25 preclude application of the grids." *Desrosiers v. Sec'y of Health and Human Servs.*, 846 F.2d
26 573, 577 (9th Cir. 1988). The ALJ must first determine that that claimant's non-exertional
27 limitations do not significantly limit the range of work permitted by his exertional limitations.
28 *Id.*; *Hoopai v. Astrue*, 499 F.3d 1071, 1075 (9th Cir. 2007); *Tackett*, 180 F.3d at 1101. "[T]he

1 Grids can never direct a conclusion of not disabled for a claimant with significant additional
2 limitations not contemplated by the Grids.” *Barnes*, 895 F.3d at 706. “[I]f an ALJ determines
3 that a claimant’s nonexertional limitations do not significantly affect his ability to perform a full
4 range of work, then use of the grids is appropriate.” *Tackett*, 180 F.3d at 1101. Mild or moderate
5 depression does not establish a “sufficiently severe non-exertional impairment” to preclude
6 reliance on the grids at step five or to require vocational expert testimony. *Myers v. Colvin*, 954
7 F.Supp.2d 1163, 1176 (W.D. Wash. 2013) (citing *Hoopai*, 499 F.3d at 1075).

8 In Plaintiff’s case, the ALJ did not find that Plaintiff’s non-exertional impairments
9 constituted significant impairments. He gave full weight to the opinion of the consultative
10 examiner Dr. Riahinejad, who opined that Plaintiff had (1) no limitations in her ability to follow
11 simple and oral instructions; interact with the public, coworkers and supervisors; comply with job
12 rules such as safety and attendance; and, respond to changes in a routine work setting; mild
13 limitations in her ability to focus and sustain attention; and, moderate limitations in her ability to
14 follow detailed instructions and to respond to work pressure in a usual work setting. AR 26, 305.
15 The ALJ also gave some weight to the agency physicians whose opinions were consistent with
16 Dr. Riahinejad’s opinion. AR 27. The ALJ rejected the opinion of treating physician Dr. Syed
17 that Plaintiff had marked and extreme limitations as inconsistent with Dr. Syed’s treatment notes
18 describing Plaintiff’s limitations as moderate. AR 26.

19 When the grids do not match the claimant’s qualifications, the ALJ may either (1) use the
20 grids as a framework to determine what work the claimant can perform or (2) rely on a vocational
21 expert to establish the availability of suitable jobs in the national economy. *Hoopai*, 499 F.3d at
22 1075; *Tackett*, 180 F.3d at 1102. At step five, the ALJ bears the burden of proving that the
23 claimant can perform a significant number of other jobs available in the national economy.
24 *Hoopai*, 499 F.3d at 1074. To meet that burden, the ALJ must “identify specific jobs existing in
25 substantial numbers in the national economy that [the] claimant can perform despite [his or her]
26 identified limitations.” *Meanel v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999) (quoting *Johnson v.*
27 *Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995)); *Best v. Astrue*, 580 F.Supp.2d 975, 981 (C.D. Cal.
28 2008). Vocational expert testimony may be necessary to provide substantial evidence to support

1 the ALJ's reliance on the grids in the face of non-exertional limitations that are not severe.
2 *Myers*, 954 F.Supp.2d at 1178. In this case, the ALJ correctly used the grids as a framework for
3 his decision but relied on the vocational expert's testimony that sufficient jobs were available in
4 the national economy that Plaintiff could perform.

5 **IX. Conclusion and Order**

6 Based on the foregoing, the Court finds that the ALJ's decision that Plaintiff is not
7 disabled is supported by substantial evidence in the record as a whole and is based on proper legal
8 standards. Accordingly, this Court DENIES Plaintiff's appeal from the administrative decision of
9 the Commissioner of Social Security. The Clerk of Court is directed to enter judgment in favor of
10 Defendant, Nancy A. Berryhill, Acting Commissioner of Social Security, and against Plaintiff,
11 Rebecca Bradley.

12
13 IT IS SO ORDERED.

14 Dated: May 14, 2019

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE