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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LISA ANN MCCANN,

Plaintiff,

No. CIV S-10-2837 EFB

vs.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

ORDER

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her applications for a period of disability and Disability Insurance Benefits (“DIB”) and for Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act. The parties’ cross-motions for summary judgment motions are pending. For the reasons discussed below, the court grants the Commissioner’s motion and denies plaintiff’s motion.

I. BACKGROUND

Plaintiff formally applied for DIB and SSI on June 21, 2007, alleging a disability onset date of January 29, 2004. AR 8. Plaintiff’s applications were denied initially and on reconsideration. *Id.* On March 24, 2008, a hearing was held before ALJ Michael Seng. *Id.*

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1 Plaintiff, who was represented by attorney Ilija Cvetich, testified at the hearing. *Id.*

2 The ALJ's February 24, 2010 decision found that plaintiff had not been disabled at any  
3 relevant time.<sup>1</sup> *Id.* at 8-15. The ALJ made the following specific findings:

4 1. The claimant meets the insured status requirements of the Social Security Act  
5 through September 30, 2009.

6 2. The claimant has not engaged in substantial gainful activity since January 29,  
7 2004, her alleged onset date (20 CFR 404.1571 *et seq.*, and 416.971 *et seq.*)

8 ...

9 3. The claimant has the following severe impairments: degenerative disc disease  
10 of the lumbar spine (20 CFR 404.1520(c) and 416.920(c)).

11 ...

12 4. The claimant does not have an impairment or combination of impairments that  
13 meets or medically equals one of the listed impairments in 20 CFR Part 404,  
14 Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d),  
15 416.926).

16 ...

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18 \_\_\_\_\_  
19 <sup>1</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the  
20 Social Security program, 42 U.S.C. §§ 401 *et seq.* Supplemental Security Income is paid to  
21 disabled persons with low income. 42 U.S.C. §§ 1382 *et seq.* Both provisions define disability,  
22 in part, as an "inability to engage in any substantial gainful activity" due to "a medically  
23 determinable physical or mental impairment. . . ." 42 U.S.C. § 1382c(a)(3)(A). A five-step  
24 sequential evaluation governs eligibility for benefits under both programs. *See* 20 C.F.R.  
25 §§ 404.1520, 404.1571-76, 416.920 and 416.971-76; *Bowen v. Yuckert*, 482 U.S. 137, 140-42  
26 (1987). The following summarizes the sequential evaluation:

Step one: Is the claimant engaging in substantial gainful activity? If so,  
the claimant is found not disabled. If not, proceed to step two.

Step two: Does the claimant have a "severe" impairment? If so, proceed  
to step three. If not, then a finding of not disabled is appropriate.

Step three: Does the claimant's impairment or combination of  
impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P,  
App.1? If so, the claimant is automatically determined disabled. If not, proceed  
to step four.

Step four: Is the claimant capable of performing his past work? If so, the  
claimant is not disabled. If not, proceed to step five.

Step five: Does the claimant have the residual functional capacity to  
perform any other work? If so, the claimant is not disabled. If not, the claimant  
is disabled.

*Lester v. Chater*, 81 F.3d 821, 828, n.5 (9th Cir. 1995).

The claimant bears the burden of proof in the first four steps of the sequential evaluation  
process. *Bowen*, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential  
evaluation process proceeds to step five. *Id.*

1 5. After careful consideration of the entire record, the undersigned finds that the  
2 claimant has the residual functional capacity to perform the full range of light  
work as defined in 20 CFR 404.1567(b) and 416.967(b).

3 ...

4 6. The claimant is capable of performing her past relevant work as a Front Desk  
5 Clerk and Housekeeper. This work does not require the performance of work-  
related activities precluded by the claimant's residual functional capacity (20 CFR  
404.1565 and 416.965).

6 ...

7 7. Even if the claimant could not perform past relevant work, there are a  
8 significant number of unskilled jobs available to someone of her age, education  
and work experience. See Medical-Vocational Rule 201.21.

9 8. The claimant has not been under a disability, as defined in the Social Security  
10 Act, at any time from January 29, 2004 through the date of this decision (20 CFR  
404.1520(f) and 416.920(f)).

11 *Id.* at 10-14.

12 Plaintiff requested that the Appeals Council review the ALJ's decision. On August 17,  
13 2010, the Appeals Council denied review, making the ALJ's decision the final decision of the  
14 Commissioner of Social Security. *Id.* at 1-4.

## 15 II. LEGAL STANDARDS

16 The Commissioner's decision that a claimant is not disabled will be upheld if the findings  
17 of fact are supported by substantial evidence in the record and the proper legal standards were  
18 applied. *Schneider v. Comm'r of the Soc. Sec. Admin.*, 223 F.3d 968, 973 (9th Cir. 2000);  
19 *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tackett v. Apfel*,  
20 180 F.3d 1094, 1097 (9th Cir. 1999).

21 The findings of the Commissioner as to any fact, if supported by substantial evidence,  
22 are conclusive. See *Miller v. Heckler*, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is  
23 more than a mere scintilla, but less than a preponderance. *Saelee v. Chater*, 94 F.3d 520, 521  
24 (9th Cir. 1996). "It means such evidence as a reasonable mind might accept as adequate to  
25 support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol.*  
26 *Edison Co. v. N.L.R.B.*, 305 U.S. 197, 229 (1938)).

1           “The ALJ is responsible for determining credibility, resolving conflicts in medical  
2 testimony, and resolving ambiguities.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir.  
3 2001) (citations omitted). “Where the evidence is susceptible to more than one rational  
4 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”  
5 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

6 III.    ANALYSIS

7           Plaintiff makes the following arguments: the ALJ erred in failing to explain why he  
8 adopted the opinions in an examining psychiatrist’s later report rather than the opinions in the  
9 psychiatrist’s earlier report; failing to provide specific and legitimate reasons for rejecting  
10 another examining psychiatrist’s opinion; failing to provide legally sufficient reasons for finding  
11 plaintiff not credible; finding plaintiff’s mental impairments non-severe at step two, and failing  
12 to consider plaintiff’s mental impairments in determining her RFC; and in finding that plaintiff  
13 was able to perform her past relevant work. Dckt. No. 16 at 5.

14         A.    The ALJ Did Not Commit Reversible Error in Weighing Physician Evidence.

15           Plaintiff argues that the ALJ erred in 1) rejecting one of Dr. Cormier’s two reports, and 2)  
16 rejecting Dr. Mehtani’s opinion. The weight given to medical opinions depends in part on  
17 whether they are proffered by treating, examining, or non-examining professionals. *Lester v.*  
18 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). To evaluate whether an ALJ properly rejected a  
19 medical opinion, in addition to considering its source, the court considers whether (1)  
20 contradictory opinions are in the record; and (2) clinical findings support the opinions. An ALJ  
21 may reject an uncontradicted opinion of a treating or examining medical professional only for  
22 “clear and convincing” reasons. *Lester*, 81 F.3d at 831. In contrast, a contradicted opinion of a  
23 treating or examining professional may only be rejected for “specific and legitimate” reasons,  
24 that are supported by substantial evidence. *Id.* at 830. This test is met if the ALJ sets out a  
25 detailed and thorough summary of the facts and conflicting clinical evidence, states his  
26 interpretation of the evidence, and makes a supported finding. *Magallanes v. Bowen*, 881 F.2d

1 747, 751–55 (9th Cir. 1989). Absent specific and legitimate reasons, the ALJ must defer to the  
2 opinion of a treating or examining physician. *Lester*, 81 F.3d at 830–31.

3 Dr. Cormier, a state agency examining psychologist, examined plaintiff on two  
4 occasions. His first examination was in 2007, when he prepared a report stating, “Structured  
5 diagnostic interviewing and behavioral observations suggested that Ms. McCann may currently  
6 meet the criteria necessary for the diagnosis of a major depressive disorder that is recurrent and  
7 of moderate intensity and prescription opioid dependence.” *Id.* at 649. Dr. Cormier found that  
8 plaintiff’s mental impairments might or were likely to significantly impair her ability to perform  
9 simple and repetitive tasks, maintain attendance, complete a normal workday or workweek, and  
10 accept and remember instructions from supervisors. *Id.* at 651. Dr. Cormier wrote that plaintiff  
11 “is only very marginally functional outside of a moderately supportive situation at the present  
12 time” but he suspected “that when her probable prescription opioid dependence issues are  
13 handled and she is a programming [sic] treated with antidepressant medications, her functional  
14 status may significantly improve.” *Id.*

15 In the next year, 2008, Dr. Cormier again examined plaintiff and gave her a number of  
16 psychological tests. AR 735-41. He opined that plaintiff “did not appear to be honest in her  
17 responses. I discerned some obvious indications of symptom magnification and possible  
18 malingering.” *Id.* at 737. He found no psychological or psychiatric impairments that would  
19 prevent plaintiff from performing simple repetitive tasks, impair her ability to maintain regular  
20 attendance and perform work activities on a consistent basis, require special or additional  
21 supervision, or prevent her from completing a normal workday or workweek without  
22 interruptions. *Id.* at 741. He found that plaintiff “may have mild impairment regarding pace.”  
23 *Id.* He acknowledged that he had previously examined plaintiff and had diagnosed her with a  
24 major depressive disorder with a GAF score of 52, but did not explicitly state why his opinion  
25 had changed. *Id.* at 737.

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1           The ALJ’s opinion does not mention Dr. Cormier’s 2007 opinion. In finding plaintiff’s  
2 mental impairment of depression non-severe, the ALJ noted that Cormier had not diagnosed a  
3 severe mental impairment in 2008. However, the ALJ did refer to the conflict between the two  
4 Cormier reports in the hearing. He asked plaintiff’s attorney “What do I do with those? One’s  
5 based on testing. One was based on subjective reaction, I think, and the second one that found,  
6 had profound problems was based on testing.” *Id.* at 51. The ALJ then questioned plaintiff  
7 about Dr. Cormier’s opinion that she was exaggerating her symptoms. *Id.* at 52.

8           Plaintiff argues that the ALJ was obligated to provide specific, legitimate reasons for  
9 crediting Dr. Cormier’s later report rather than his earlier one. But resolving conflicts between  
10 two reports by the same doctor, where that doctor has changed his opinion over time, is not akin  
11 to resolving conflicts between two doctors. Dr. Cormier’s second report is clearly inconsistent  
12 with his first report and the second report was drafted at a later date after further testing. It  
13 appears that the opinions in the second report supersede the opinions given in the first report. By  
14 writing his second report, Dr. Cormier implicitly disavowed the inconsistent opinions given in  
15 his first report. In such a situation there is no legal requirement that an ALJ provide specific and  
16 legitimate reasons for crediting a later report rather than an earlier, implicitly rejected report.  
17 Regardless, the ALJ’s discussion of the two reports at the hearing shows that he was aware of  
18 Dr. Cormier’s first report and rejected it because it was based on “subjective reaction” rather  
19 than objective testing.

20           Plaintiff further argues that the ALJ improperly rejected the opinion of his examining  
21 physician, Dr. Mehtani. Plaintiff’s attorney arranged for Dr. Mehtani to examine plaintiff in  
22 November 2007. AR 270. Dr. Mehtani opined that plaintiff “has had chronic depression and  
23 anxiety,” that “she is not able to stay in any gainful employment,” and that “[i]n spite of any  
24 psychiatric treatment she is not likely to return to gainful employment.” *Id.*

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1 The ALJ rejected Dr. Mehtani's opinion, writing:

2 In a psychological evaluation by Sidney Cormier, Ph.D., in May 2008, the  
3 examiner concluded the claimant was less than honest in her responses and in fact  
4 had shown obvious indications of symptom magnification and possible  
5 malingering. He did not diagnose a severe mental impairment. The contrary  
6 suggestion by Janak Mehtani, M.D., is not persuasive inasmuch as it resulted  
7 from an exam arranged by the claimant's attorney in furtherance of the claimant's  
8 pursuit of these benefits and it lacks support elsewhere in the record. (Exhibit  
9 21F, 24F, 27F).

10 Note too that analysis of the claimant's symptoms and limitations under the four  
11 broad functional areas set out in the disability regulations for evaluating mental  
12 disorders...also leads to the conclusion that she does not have a "severe" mental  
13 impairment. It does not appear the claimant has more than "mild," if any,  
14 limitation in the first three functional areas. In activities of daily living and social  
15 functioning, the claimant appears fully capable of performing all activities of  
16 daily living. She cares for her boyfriend's son, follows a check list for  
17 maintaining order and ensuring task completion, cleans, drives an automobile to  
18 various life events, shops for groceries, movies and various household needs and  
19 handles the household finances. Neither her history nor her response to  
20 questioning suggests significant impairment sustaining concentration or  
21 persistence; she may have mild impairment regarding pace.

22 AR 11. Thus, the ALJ provided the following reasons for rejecting Dr. Mehtani's opinion: 1) it  
23 was inconsistent with Dr. Cormier's opinion; 2) it resulted from an exam arranged by the  
24 claimant's attorney; and 3) it lacks support elsewhere in the record, as it is inconsistent with  
25 plaintiff's activities of daily living and her history and response to questioning.

26 Plaintiff correctly argues that the second reason is not legitimate, as an examining  
doctor's findings are entitled to the same weight regardless of whether the examination was  
obtained by the plaintiff or by the Commissioner. *See Lester*, 81 F.3d at 832. Defendant argues  
that the ALJ properly discounted Dr. Mehtani's opinion because plaintiff's attorney arranged for  
the examination. Defendants rely on *Salee v. Chater*, in which the Ninth Circuit upheld an  
ALJ's rejection of an examining doctor's opinion not solely because it had been solicited by  
plaintiff's attorney, but because the ALJ had cited to "actual improprieties" in the report. 94  
F.3d 520, 522-23 (9th Cir. 1996). Specifically, in *Salee* the report was "worded in such a way  
that it [struck the ALJ] as an effort by the physician to assist a patient even though there is no  
objective medical basis for the opinion." *Id.* at 523. Here, the ALJ opinion points to no

1 evidence of actual improprieties in Dr. Mehtani’s report. However, because the ALJ provided at  
2 least one additional specific and legitimate reason for discounting Mehtani’s opinion, this error  
3 is harmless.

4 Plaintiff further argues that the ALJ could not discount Dr. Mehtani’s report on the basis  
5 that it was inconsistent with Dr. Cormier’s 2008 report because Dr. Mehtani’s opinions were  
6 consistent with Dr. Cormier’s 2007 report, and were also consistent with the opinion of Dr. Troy,  
7 a workers compensation agreed medical evaluator. As explained above, the ALJ did not err in  
8 relying on Dr. Cormier’s 2008 report rather than his 2007 report. It is true that parts of Dr.  
9 Mehtani’s opinion were actually consistent with some other pieces of evidence in the record, and  
10 therefore the ALJ’s statement that “it lacks support elsewhere in the record” is inaccurate when  
11 read in its most literal sense. But the more specific reason that the ALJ gave—that Dr. Mehtani’s  
12 opinion is inconsistent with plaintiff’s activities of daily living, as well as her history and  
13 response to questioning—is specific and legitimate, and is therefore a legally sufficient reason to  
14 reject Dr. Mehtani’s opinion. *See Edlund v. Massanari*, 253 F.3d at 1156 (an ALJ is responsible  
15 for “for determining credibility, resolving conflicts in medical testimony, and resolving  
16 ambiguities”).

17 **B. The ALJ Did Not Err in Finding Plaintiff Not Completely Credible.**

18 Plaintiff argues that the ALJ erred in finding her testimony not completely credible. In  
19 rejecting a claimant’s subjective complaints, the administrative law judge “must provide  
20 ‘specific, cogent reasons for the disbelief.’” *Lester*, 81 F.3d at 834. Without affirmative  
21 evidence showing that the claimant is malingering, the reasons for rejecting the claimant’s  
22 testimony must be clear and convincing. *See id.* The ALJ must specifically identify what  
23 testimony is credible and what testimony undermines the claimant’s complaints. *See id.*; *see*  
24 *also Morgan v. Apfel*, 169 F.3d 595, 599 (9th Cir. 1999).

25 Plaintiff testified at the administrative hearing that her stress and depression interfered  
26 with her ability to work. AR 41-43. She testified that she had had a psychiatric exam at Fair



1 Oaks Psychiatric, that she had lost weight from and was taking Klonopin and Wellbutrin for the  
2 depression. *Id.* at 42-43. She testified that the medication “gets me through the day, but I’m still  
3 depressed.” *Id.* at 43. She testified that she did not pursue psychiatric treatment because she was  
4 “depressed and not wanting to do it.” *Id.* at 45. When asked why she did not continue working  
5 at her previous job providing in-home support services, she said “I would if . . . my back wasn’t  
6 in so much pain . . . . I could if it wouldn’t, you know, if my back didn’t hurt so much, I would  
7 do it, yes.” *Id.* at 30-31.

8         There was evidence that plaintiff was malingering. Notably, the ALJ pointed out that Dr.  
9 Cormier “concluded that the claimant was less than honest in her responses and in fact had  
10 shown obvious indications of symptom magnification and possible malingering.” *Id.* at 11.  
11 Similarly, the ALJ noted that plaintiff was “described as demonstrating inappropriate illness  
12 behavior, e.g., reporting very high pain levels but behaving in ways that did not correspond to  
13 such high level of pain.” *Id.* at 13. In assessing plaintiff’s credibility, the ALJ wrote that there  
14 were “noted inconsistencies between the claimant’s alleged symptoms and those typically  
15 observed in such patients and those observed in her when she was not being directly examined.”  
16 *Id.* at 14. Because there is affirmative evidence showing that plaintiff was malingering, the ALJ  
17 was not obligated to provide clear and convincing reasons for rejecting plaintiff’s testimony.  
18 Instead, he needed to provide only “specific, cogent reasons for the disbelief.” *Lester*, 81 F.3d at  
19 834.

20         In evaluating plaintiff’s credibility, the ALJ wrote:

21         . . . considering the various medical opinions, the clinical and radiographic  
22 findings, and the noted inconsistencies between the claimant’s alleged symptoms  
23 and those typically observed in such patients and those observed in her when she  
24 was not directly being examined, it must be concluded that her claims of a  
25 disabling level of pain and limitation simply are not credible at least insofar as  
26 they suggest inability to do even light work activities. In addition to the  
foregoing, it is noted that the claimant’s allegedly disabling injuries and  
symptoms long predate her alleged onset of disability. She worked in spite of  
back and knee problems which she relates back to 2001. Even after the alleged  
2004 aggravation of her condition, the claimant worked 3 ½ hours a day bathing,  
dressing, and doing household work for a 175 disabled woman. Moreover,

1 despite some slight opinion variations, no examining or non-examining physician  
2 has suggested that the claimant is precluded from performing the full range of  
light work.

3 AR 14. Earlier in the opinion, the ALJ also noted that plaintiff's activities of daily living,  
4 history, and responses to questioning did not show more than a mild mental impairment. *Id.* at

5 11. Thus, the ALJ gave the following reasons for finding plaintiff's testimony not completely  
6 credible: 1) her testimony was inconsistent with the medical opinions in the record; 2) her  
7 testimony was inconsistent with the clinical and radiographic findings; 3) she appeared to  
8 exaggerate her symptoms on examination; 4) the injuries that she claims render her unable to  
9 work predate her alleged date of onset of disability; 5) she in fact worked 3 ½ hours a day during  
10 the period of time that she claimed to be disabled; 6) no doctor opined that she could not do a  
11 full range of light work; and 7) her activities of daily living, history and responses to questioning  
12 do not show more than a mild mental impairment. Thus, the ALJ provided a number of specific,  
13 cogent reasons for finding plaintiff not completely credible. Plaintiff does not explain why each  
14 of these reasons is not legally sufficient.

15 Instead, plaintiff argues that the ALJ failed to consider the side-effects of her medication  
16 in assessing her credibility. She notes that she was taking "numerous medications" and that  
17 three doctors "expressed concerns about [her] opioid dependency." Dckt. No. 16 at 20. She  
18 writes that her "depression and opioid dependency may have been a major factor that influenced  
19 her subjective pain complaints and her credibility that the ALJ erroneously failed to consider  
20 entirely." *Id.* Similarly, plaintiff argues that her ability to engage in certain daily activities and  
21 to work 3 ½ hours a day do not translate to an ability to engage in substantial gainful activity.  
22 *Id.* But these arguments amount to nothing more than plaintiff's disagreement with the ALJ's  
23 weighing of the evidence. *See Edlund v. Massanari*, 253 F.3d at 1156 (an ALJ is responsible for  
24 "for determining credibility, resolving conflicts in medical testimony, and resolving  
25 ambiguities").

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1 Plaintiff also argues that the ALJ “did not go through the reasons why Ms. McCann’s  
2 subjective complaints about her depression were not credible.” Dckt. No. 16 at 18. To the  
3 contrary, the ALJ found that plaintiff’s activities of daily living, history and responses to  
4 questioning did not show more than a mild mental impairment. AR 11. To the extent that this  
5 finding was inconsistent with plaintiff’s testimony regarding her depression, the ALJ provided  
6 specific, cogent reasons for rejecting the testimony.

7 C. The Commissioner Did Not Err in Finding that Plaintiff’s Mental Impairments  
8 Were Non-Severe, or in Assessing Plaintiff’s Residual Functional Capacity.

9 Plaintiff argues that the ALJ erred in 1) finding that her mental impairments were non-  
10 severe at step two and 2) in not considering her mental impairments in assessing her residual  
11 functional capacity.

12 The ALJ found at step two that plaintiff suffered from the medically determinable  
13 impairment of depression, but that it was non-severe. A severe impairment is one that  
14 “significantly limits” a claimant’s “physical or mental ability to do basic work activities.” 20  
15 C.F.R. § 404.1520(c). An ALJ must consider all of the evidence at step two to determine  
16 whether a medically determinable impairment significantly limits the claimant’s ability to  
17 perform basic work activities. *Id.* § 404.1520(a); *Bowen v. Yuckert*, 482 U.S. 137, 145 (1987).  
18 “An impairment or combination of impairments may be found ‘not severe only if the evidence  
19 establishes a slight abnormality that has no more than a minimal effect on an individual’s ability  
20 to work.’” *Webb v. Barnhart*, 433 F.3d 683, 686–87 (9th Cir. 2005) (citation omitted). Step two  
21 is “a de minimis screening device [used] to dispose of groundless claims” and the ALJ’s finding  
22 must be “clearly established by medical evidence.” *Id.* at 687 (citations and quotation marks  
23 omitted).

24 Plaintiff argues that the record shows that her mental impairments of depression and  
25 anxiety had more than a de minimis effect on her ability to work. She cites Dr. Cormier’s  
26 opinion in his first report and Dr. Mehtani’s opinion. As explained in detail above, the ALJ did

1 not err in not crediting these opinions. Similarly, as explained above, the ALJ provided legally  
2 sufficient reasons for rejecting plaintiff’s testimony regarding the severity of her depression and  
3 its impact on her ability to work.

4 Plaintiff further argues that “Dr. Troy, and the doctors at Anderson Medical Center  
5 believed that Ms. Mann’s need [sic] psychological help when it came to her mental condition.”  
6 Dckt. No. 16 at 22. But Dr. Troy’s ultimate opinion was,”Frankly I am not sure what anyone is  
7 going to do for her as she is now describing all of her physicians as incompetent. I think that  
8 given her history and claims of depression that that however might be a good place to start.  
9 However, I see no reason for any such treatment on an industrial basis. If there is a problem it is  
10 likely psychosocial . . . I do not find any need for further treatment.” AR 442. Thus, while Dr.  
11 Troy suggested that plaintiff be treated for depression, if anything at all, he ultimately  
12 recommended no further treatment. Dr. Troy did not find plaintiff’s mental impairments  
13 significantly limited her ability to work. Plaintiff has not met her burden of showing that the  
14 ALJ erred in finding her mental impairments non-severe.

15 Plaintiff further argues that, regardless of whether her mental impairments were severe or  
16 non-severe, the ALJ erred in failing to consider her mental impairments in assessing her RFC. It  
17 is true that an ALJ must consider the effect of all impairments, both severe and non-severe, in  
18 assessing an RFC. *See* 20 CFR § 404.1523. But there is no indication that the ALJ failed to  
19 include plaintiff’s mental limitations—specifically, his finding that plaintiff’s depression “does  
20 not cause more than minimal limitation in [her] ability to perform basic mental work  
21 activities”—in determining that plaintiff had the RFC to perform a full range of light work. *See*  
22 AR 11. Although plaintiff disagrees with the ALJ’s weighing of the evidence, plaintiff has not  
23 shown that the ALJ made a legal error or that his RFC finding was not supported by substantial  
24 evidence.

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1 D. The ALJ Did Not Err in Determining that Plaintiff Could Perform Her Past  
2 Relevant Work.

3 Plaintiff argues that because the ALJ did not adopt Dr. Cormier's first opinion and Dr.  
4 Mehtani's opinion regarding her mental limitations, the ALJ erred in finding that she could  
5 perform her past relevant work. As explained above, the ALJ did not err in rejecting the doctors'  
6 opinions.

7 IV. CONCLUSION

8 The ALJ's decision is based on the proper legal standards and is supported by substantial  
9 evidence. Accordingly, it is hereby ORDERED that:

- 10 1. Plaintiff's motion for summary judgment is denied;  
11 2. The Commissioner's motion for summary judgment is granted; and  
12 3. The Clerk is directed to enter judgment in the Commissioner's favor and close the  
13 case.

14 DATED: March 30, 2012.

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16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE  
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