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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH B. TRIPLETT,  
Plaintiff,  
v.  
COMMISSIONER OF SOCIAL  
SECURITY,  
Defendant.

No. 2:16-cv-2168-KJN

ORDER

Plaintiff Joseph Triplett seeks judicial review of a final decision by the Commissioner of Social Security (“Commissioner”) denying plaintiff’s application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act (“Act”).<sup>1</sup> In his motion for summary judgment, plaintiff principally contends that the Commissioner erred by finding that plaintiff was not disabled from September 13, 2013, the date that plaintiff’s SSI application was filed, through April 9, 2015, the date of the final administrative decision. (ECF No. 13.) The Commissioner opposed plaintiff’s motion and filed a cross-motion for summary judgment. (ECF No. 16.) No optional reply brief was filed.

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<sup>1</sup> This action was referred to the undersigned pursuant to Local Rule 302(c)(15), and both parties voluntarily consented to proceed before a United States Magistrate Judge for all purposes. (ECF Nos. 7, 8.)

1 After carefully considering the record and the parties' briefing, the court DENIES  
2 plaintiff's motion for summary judgment, GRANTS the Commissioner's cross-motion for  
3 summary judgment, and AFFIRMS the Commissioner's final decision.

4 I. BACKGROUND

5 Plaintiff was born on January 12, 1986; has a limited education; can communicate in  
6 English; and has no past relevant work. (Administrative Transcript ("AT") 19, 28, 160.)<sup>2</sup> On  
7 September 13, 2013, plaintiff applied for SSI, claiming that he was disabled due to post-traumatic  
8 stress disorder, attention deficit hyperactivity disorder, bipolar disorder, depression, anxiety,  
9 learning disabilities, psychosis, type 2 diabetes, back and knee injuries, elevated liver enzymes,  
10 and a Vitamin D deficiency. (AT 12, 161.) After plaintiff's application was denied initially and  
11 on reconsideration, an ALJ conducted a hearing on February 3, 2015, at which plaintiff,  
12 represented by a non-attorney representative, and a vocational expert ("VE") testified. (AT 25-  
13 48.) The ALJ subsequently issued a decision dated April 9, 2015, determining that plaintiff had  
14 not been under a disability, as defined in the Act, from September 13, 2013, the date that  
15 plaintiff's SSI application was filed, through the date of the ALJ's decision. (AT 12-20.) The  
16 ALJ's decision became the final decision of the Commissioner when the Appeals Council denied  
17 plaintiff's request for review on July 11, 2016. (AT 1-4.) Plaintiff subsequently filed this action  
18 on September 12, 2016, to obtain judicial review of the Commissioner's final decision. (ECF No.  
19 1.)

20 II. ISSUES PRESENTED

21 On appeal, plaintiff raises the sole issue of whether the ALJ improperly discounted the  
22 opinion of plaintiff's treating physician concerning plaintiff's mental functional capacity.<sup>3</sup>

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24 <sup>2</sup> Because the parties are familiar with the factual background of this case, including plaintiff's  
25 medical and mental health history, the court does not exhaustively relate those facts in this order.  
26 The facts related to plaintiff's impairments and treatment will be addressed insofar as they are  
relevant to the issues presented by the parties' respective motions.

27 <sup>3</sup> Plaintiff has not challenged the ALJ's evaluation of plaintiff's physical functional capacity  
28 through any substantive briefing or argument. Thus, any such issue is waived. See Carmickle v.  
Comm'r, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008).

1 III. LEGAL STANDARD

2 The court reviews the Commissioner’s decision to determine whether (1) it is based on  
3 proper legal standards pursuant to 42 U.S.C. § 405(g), and (2) substantial evidence in the record  
4 as a whole supports it. Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial  
5 evidence is more than a mere scintilla, but less than a preponderance. Connett v. Barnhart, 340  
6 F.3d 871, 873 (9th Cir. 2003) (citation omitted). It means “such relevant evidence as a reasonable  
7 mind might accept as adequate to support a conclusion.” Orn v. Astrue, 495 F.3d 625, 630 (9th  
8 Cir. 2007), quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). “The ALJ is  
9 responsible for determining credibility, resolving conflicts in medical testimony, and resolving  
10 ambiguities.” Edlund v. Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001) (citation omitted). “The  
11 court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational  
12 interpretation.” Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008).

13 IV. DISCUSSION

14 Summary of the ALJ’s Findings

15 The ALJ evaluated plaintiff’s entitlement to SSI pursuant to the Commissioner’s standard  
16 five-step analytical framework.<sup>4</sup> At the first step, the ALJ concluded that plaintiff had not

17 <sup>4</sup> Disability Insurance Benefits are paid to disabled persons who have contributed to the Social  
18 Security program. 42 U.S.C. §§ 401 et seq. Supplemental Security Income is paid to disabled  
19 persons with low income. 42 U.S.C. §§ 1382 et seq. Both provisions define disability, in part, as  
20 an “inability to engage in any substantial gainful activity” due to “a medically determinable  
21 physical or mental impairment. . . .” 42 U.S.C. §§ 423(d)(1)(a) & 1382c(a)(3)(A). A parallel  
22 five-step sequential evaluation governs eligibility for benefits under both programs. See 20  
23 C.F.R. §§ 404.1520, 404.1571-76, 416.920 & 416.971-76; Bowen v. Yuckert, 482 U.S. 137, 140-  
24 42 (1987). The following summarizes the sequential evaluation:

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

27 Step two: Does the claimant have a “severe” impairment? If so, proceed to step  
28 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 her past relevant work? If so, the

1 engaged in substantial gainful activity since September 13, 2013, plaintiff's SSI application date.  
2 (AT 14.) At step two, the ALJ found that plaintiff had the following severe impairments:  
3 attention deficit disorder, post-traumatic stress disorder, and bipolar disorder. (Id.) However, at  
4 step three, the ALJ determined that plaintiff did not have an impairment or combination of  
5 impairments that met or medically equaled the severity of an impairment listed in 20 C.F.R. Part  
6 404, Subpart P, Appendix 1. (AT 15.)

7 Before proceeding to step four, the ALJ assessed plaintiff's RFC as follows:

8 After careful consideration of the entire record, the undersigned  
9 finds that the claimant has the residual functional capacity to  
10 perform a full range of work at all exertional levels but with the  
11 following nonexertional limitations: the claimant can understand,  
remember and carry out simple job tasks; he can maintain attention  
and concentration for simple job tasks; he cannot interact with the  
public and should avoid working on a team with coworkers.

12 (AT 16.) At step four, the ALJ determined that plaintiff had no past relevant work. (AT 19.)  
13 Nevertheless, at step five, the ALJ found that, in light of plaintiff's age, education, work  
14 experience, and RFC, and in reliance on the VE's testimony, there were jobs that existed in  
15 significant numbers in the national economy that plaintiff could perform. (AT 19-20.)

16 Consequently, the ALJ concluded that plaintiff had not been under a disability, as defined  
17 in the Act, from September 13, 2013, plaintiff's SSI application filing date, through April 9, 2015,  
18 the date of the ALJ's decision. (AT 20.)

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22 claimant is not disabled. If not, proceed to step five.

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

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

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

1                                    Plaintiff’s Substantive Challenges to the Commissioner’s Determinations

2                    As noted above, plaintiff’s appeal raises the sole issue of whether the ALJ improperly  
3 discounted the opinion of plaintiff’s treating physician, Dr. Carlota Nepomuceno, concerning  
4 plaintiff’s mental functional capacity.

5                    The weight given to medical opinions depends in part on whether they are proffered by  
6 treating, examining, or non-examining professionals. Holohan v. Massanari, 246 F.3d 1195,  
7 1201-02 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). Generally speaking,  
8 a treating physician’s opinion carries more weight than an examining physician’s opinion, and an  
9 examining physician’s opinion carries more weight than a non-examining physician’s opinion.  
10 Holohan, 246 F.3d at 1202.

11                    To evaluate whether an ALJ properly rejected a medical opinion, in addition to  
12 considering its source, the court considers whether (1) contradictory opinions are in the record;  
13 and (2) clinical findings support the opinions. An ALJ may reject an uncontradicted opinion of a  
14 treating or examining medical professional only for “clear and convincing” reasons. Lester, 81  
15 F.3d at 830-31. In contrast, a contradicted opinion of a treating or examining professional may be  
16 rejected for “specific and legitimate” reasons. Id. at 830. While a treating professional’s opinion  
17 generally is accorded superior weight, if it is contradicted by a supported examining  
18 professional’s opinion (supported by different independent clinical findings), the ALJ may  
19 resolve the conflict. Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (citing Magallanes  
20 v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)). The regulations require the ALJ to weigh the  
21 contradicted treating physician opinion, Edlund, 253 F.3d at 1157,<sup>5</sup> except that the ALJ in any  
22 event need not give it any weight if it is conclusory and supported by minimal clinical findings.  
23 Meanel v. Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (treating physician’s conclusory, minimally  
24 supported opinion rejected); see also Magallanes, 881 F.2d at 751. The opinion of a non-  
25 examining professional, by itself, is insufficient to reject the opinion of a treating or examining  
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27 <sup>5</sup> The factors include: (1) length of the treatment relationship; (2) frequency of examination;  
28 (3) nature and extent of the treatment relationship; (4) supportability of diagnosis;  
(5) consistency; and (6) specialization. 20 C.F.R. § 404.1527.

1 professional. Lester, 81 F.3d at 831.

2 In this case, plaintiff's treating primary care physician, Dr. Carlota Nepomuceno,  
3 completed a one-page medical source statement dated May 12, 2014, stating that plaintiff suffered  
4 from bipolar disorder and depression with symptoms of anger, irritability, anxiety, and  
5 depression; was unable to focus on tasks; and was incapable of working. (AT 360.) As outlined  
6 below, the ALJ provided specific and legitimate reasons for discounting Dr. Nepomuceno's  
7 opinion.

8 As an initial matter, the opinion is entirely conclusory and unsupported by any specific  
9 clinical findings or rationale. As such, the ALJ properly gave the opinion little weight. See  
10 Meanel, 172 F.3d at 1114 (treating physician's conclusory, minimally supported opinion  
11 rejected); see also Magallanes, 881 F.2d at 751.

12 Additionally, as the ALJ noted, Dr. Nepomuceno's severe opinion is not adequately  
13 supported by the treatment records and appeared to rely heavily on plaintiff's subjective  
14 complaints. (AT 17.) Although Dr. Nepomuceno's notes documented numerous subjective  
15 complaints of anxiety, poor concentration, and other mental symptoms, the treatment records  
16 contain little in the form of objective clinical findings. Notably, as the ALJ discussed, when Dr.  
17 Nepomuceno referred plaintiff for a psychiatric consultation with her colleague, Dr. Daniel  
18 Weiner, on August 29, 2014, Dr. Weiner made significantly less severe findings. (AT 17-18,  
19 365-67.) Dr. Weiner found that plaintiff was not depressed; he had mood swings and some social  
20 anxiety, but in general was not really anxious; and he experienced manic episodes that did not  
21 amount to full-blown mania about twice a week. (AT 365, 367.) Plaintiff displayed no agitation,  
22 anhedonia, anxiety, grandiosity, hallucinations, hopelessness, pressured speech, or suicidal  
23 ideation. (AT 367.) Dr. Weiner opined that plaintiff appeared "pretty stable" on his medication  
24 regimen. (Id.)

25 Furthermore, the ALJ reasonably relied on the opinion of consultative examining  
26 psychologist, Dr. Sid Cormier, who reviewed plaintiff's records and personally evaluated plaintiff  
27 on November 25, 2013. (AT 17, 352-57.) Dr. Cormier made detailed clinical findings,  
28 administered intelligence and memory testing, and ultimately found plaintiff essentially capable

1 of performing simple and repetitive tasks with limited social interaction. (AT 352-57.) Because  
2 Dr. Cormier, a mental health specialist, personally examined plaintiff and made independent  
3 clinical findings, his opinion constitutes substantial evidence on which the ALJ was entitled to  
4 rely.

5 Finally, the ALJ rationally relied on the opinion of state agency psychologist, Dr.  
6 Cattnach, who reviewed plaintiff's records on January 30, 2014, and opined that plaintiff could  
7 perform simple tasks, but in a non-public setting with little interpersonal contact due to his history  
8 as a sex offender. (AT 17, 72-74.) Dr. Cattnach's opinion is largely consistent with the opinion  
9 of consultative examining psychologist Dr. Cormier as well as the assessment of Dr. Weiner,  
10 discussed above. See Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) ("Although the  
11 contrary opinion of a non-examining medical expert does not alone constitute a specific,  
12 legitimate reason for rejecting a treating or examining physician's opinion, it may constitute  
13 substantial evidence when it is consistent with other independent evidence in the record.").

14 Therefore, the court finds that the ALJ's evaluation of Dr. Nepomuceno's opinion is  
15 supported by the record and by the proper analysis.


16 V. CONCLUSION

17 For the foregoing reasons, the ALJ's decision is free from prejudicial error and supported  
18 by substantial evidence in the record as a whole. Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's motion for summary judgment (ECF No. 13) is DENIED.
- 20 2. The Commissioner's cross-motion for summary judgment (ECF No. 16) is  
21 GRANTED.
- 22 3. The final decision of the Commissioner is AFFIRMED, and judgment is entered  
23 for the Commissioner.
- 24 4. The Clerk of Court shall close this case.

25 IT IS SO ORDERED.

26 Dated: January 22, 2018

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE