

1 the ALJ's decision generally bears the burden of establishing that it was harmed.
2 *Shineski v. Sanders*, 556 U.S. 396, 409-410 (2009).

3 **FIVE-STEP EVALUATION PROCESS**

4 A claimant must satisfy two conditions to be considered "disabled" within the
5 meaning of the Social Security Act. First, the claimant must be "unable to engage in
6 any substantial gainful activity by reason of any medically determinable physical or
7 mental impairment which can be expected to result in death or which has lasted or
8 can be expected to last for a continuous period of not less than twelve months." 42
9 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant's impairment must
10 be "of such severity that he is not only unable to do his previous work[,] but cannot,
11 considering his age, education, and work experience, engage in any other kind of
12 substantial gainful work which exists in the national economy." 42 U.S.C. §§
13 423(d)(2)(A); 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to determine
15 whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§ 404.1520(a)(4)(i)-
16 (v); 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's
17 work activity. 20 C.F.R. §§ 404.1520(a)(4)(i); 416.920(a)(4)(i). If the claimant is
18 engaged in "substantial gainful activity," the Commissioner must find that the
19 claimant is not disabled. 20 C.F.R. §§ 404.1520(b); 416.920(b).

1 If the claimant is not engaged in substantial gainful activity, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
4 claimant suffers from “any impairment or combination of impairments which
5 significantly limits [his or her] physical or mental ability to do basic work
6 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
7 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
8 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
9 §§ 404.1520(c); 416.920(c).

10 At step three, the Commissioner compares the claimant’s impairment to
11 severe impairments recognized by the Commissioner to be so severe as to preclude a
12 person from engaging in substantial gainful activity. 20 C.F.R. §§
13 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more severe
14 than one of the enumerated impairments, the Commissioner must find the claimant
15 disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

16 If the severity of the claimant’s impairment does not meet or exceed the
17 severity of the enumerated impairments, the Commissioner must pause to assess the
18 claimant’s “residual functional capacity.” Residual functional capacity (RFC),
19 defined generally as the claimant’s ability to perform physical and mental work
20 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§

1 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
2 analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in the
5 past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv). If the
6 claimant is capable of performing past relevant work, the Commissioner must find
7 that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f). If the
8 claimant is incapable of performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing other work in the national economy. 20
11 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination, the
12 Commissioner must also consider vocational factors such as the claimant's age,
13 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
14 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
15 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
16 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
17 work, analysis concludes with a finding that the claimant is disabled and is therefore
18 entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

19 The claimant bears the burden of proof at steps one through four above.
20 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to

1 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
2 capable of performing other work; and (2) such work “exists in significant numbers
3 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.920(c)(2); *Beltran v.*
4 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

5 **ALJ’S FINDINGS**

6 Plaintiff applied for Title XVI supplemental security income benefits and Title
7 II disability insurance benefits on June 23, 2011, and February 6, 2012, respectively.
8 In both applications, Plaintiff alleged a disability onset date of January 1, 2009. Tr.
9 188-90, 191-96. The applications were denied initially, Tr. 104-07, and on
10 reconsideration, Tr. 109-111. Plaintiff appeared at a hearing before an
11 Administrative Law Judge (ALJ) on September 6, 2013. Tr. 41-74. On November
12 8, 2013, the ALJ denied Plaintiff’s claim. Tr. 15-40.

13 As a threshold issue, the ALJ found that Plaintiff met the insured status
14 requirements of the Act with respect to her disability benefit claim through
15 December 31, 2007. Tr. 20. At step one, the ALJ found that Plaintiff has not
16 engaged in substantial gainful activity since the alleged onset date, January 1, 2009.
17 Tr. 20. At step two, the ALJ found that Plaintiff has the following severe
18 impairments: degenerative disc disease – cervical, thoracic, and lumbar spine;
19 obesity; bipolar disorder; anxiety disorder; and borderline personality disorder. Tr.
20 20-21. At step three, the ALJ found that Plaintiff does not have an impairment or

1 combination of impairments that meets or medically equals a listed impairment. Tr.

2 21. The ALJ then concluded that Plaintiff has the RFC to perform a range of light
3 work, with the following additional limitations:

4 [Plaintiff] can occasionally balance, stoop, kneel, crouch, crawl, and climb
5 ramps, stairs, or ladders, but can never climb ropes or scaffolds; she should
6 avoid concentration exposure to unprotected heights, excessive vibration, and
7 moving machinery; she would be limited to simple, routine, and repetitive
8 tasks; she should not be required to perform at a fast-paced production rate;
9 she should avoid all interaction with the general public; she could tolerate
10 superficial interaction with co-workers in small group settings; and she could
11 have occasional interaction with supervisors.

12 Tr. 25-26.

13 At step four, the ALJ found that Plaintiff is unable to perform her past
14 relevant work. Tr. 32. At step five, the ALJ found that considering Plaintiff's age,
15 education, work experience, and RFC, there are jobs that exist in significant
16 numbers in the national economy that Plaintiff can perform, such as
17 housekeeper/cleaner, cannery worker, and retail pricer/marker. Tr. 32-33. On that
18 basis, the ALJ concluded that Plaintiff is not disabled as defined in the Social
19 Security Act. Tr. 34.

20 On May 24, 2015, the Appeals Council denied review, Tr. 1-3, making the
Commissioner's decision final for purposes of judicial review. *See* 42 U.S.C. §
1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

1 have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591
2 (9th Cir. 2009) (internal quotation marks omitted).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting
7 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). “General findings are
8 insufficient; rather, the ALJ must identify what testimony is not credible and what
9 evidence undermines the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81
10 F.3d 821, 834 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir.
11 2002) (“[T]he ALJ must make a credibility determination with findings sufficiently
12 specific to permit the court to conclude that the ALJ did not arbitrarily discredit
13 claimant’s testimony.”). “The clear and convincing [evidence] standard is the most
14 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
15 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
16 924 (9th Cir. 2002)).

17 In making an adverse credibility determination, the ALJ may consider, *inter*
18 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
19 claimant’s testimony or between her testimony and her conduct; (3) the claimant’s
20 daily living activities; (4) the claimant’s work record; and (5) testimony from

1 physicians or third parties concerning the nature, severity, and effect of the
2 claimant's condition. *Thomas*, 278 F.3d at 958-59.

3 This Court finds the ALJ provided specific, clear, and convincing reasons for
4 finding that Plaintiff's statements concerning the intensity, persistence and limiting
5 effects of her symptoms "are not entirely credible." Tr. 26.

6 *1. Lack of Objective Medical Evidence of Physical Limitations*

7 First, the ALJ found that the objective medical evidence did not support the
8 degree of physical limitations alleged by Plaintiff. Tr. 26. Subjective testimony
9 cannot be rejected solely because it is not corroborated by objective medical
10 findings, but medical evidence is a relevant factor in determining the severity of a
11 claimant's impairments. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001);
12 *see also Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005).

13 The ALJ set out, in detail, the medical evidence regarding Plaintiff's
14 impairments, and ultimately concluded that her allegations were inconsistent with
15 the medical evidence. Tr. 26-31. The ALJ relied on the fact that the medical records
16 showed that prescribed medication effectively controlled Plaintiff's symptoms. Tr.
17 26-27. For example, some of the earliest medical records indicated Plaintiff had a
18 history of back pain, but she reported that her pain was controlled with medication.
19 Tr. 26-27 (citing Tr. 304) (Plaintiff reported in April 2009, three months after onset,
20 that her back pain was controlled with Naprosyn, and she usually took only one

1 Vicodin or less a day). Similarly, in November 2009, Plaintiff reported that the
2 change of medication to Savella helped her back pain, Tr. 27 (citing Tr. 310), and in
3 August 2010, Plaintiff reported that her headaches and neck pain were “much
4 improved” shortly after she was prescribed Imitrex. Tr. 27 (citing Tr. 316, 319).

5 The ALJ also relied on physical examinations that yielded essentially normal
6 findings. Tr. 26-28. The ALJ noted that an examination in May 2011 by Susan
7 Dennie, ARNP, was largely normal. Tr. 27 (citing Tr. 357). Ms. Dennie observed
8 that although Plaintiff’s spine was positive for posterior tenderness, there was no
9 paravertebral spasm; flexion and rotation were normal; seated straight-leg raising
10 was negative; and gait and balance were intact. Although Ms. Dennie diagnosed
11 cervicalgia and low back pain; significantly, she further reported that there were no
12 signs of impingement indicating the need for further studies, such as an MRI. Tr. 27
13 (citing Tr. 357). In December 2011, reviewing doctor Robert Hoskins, M.D., opined
14 that Plaintiff was able to perform light work, with additional limitations. Tr. 27
15 (citing Tr. 95). Further, the ALJ explained that although Plaintiff reported she could
16 only walk a half block, sit for fifteen to thirty minutes, and stand for up to thirty
17 minutes, an independent medical examination (IME) by Dr. Rose in January 2012
18 was essentially normal. Tr. 27 (citing Tr. 421-26). Plaintiff told Dr. Rose that
19 physical therapy had not been effective, but she found chiropractic treatment helpful.
20 Tr. 421. Dr. Rose diagnosed degenerative arthrosis, cervical, thoracic and

1 lumbo-sacral spine, without current evidence of radiculopathy. Tr. 27 (citing Tr.
2 423). He noted no specific spinous process tenderness or paravertebral spasm (Tr.
3 422), normal sensorimotor discrimination, adequate balance, a normal gait, and
4 negative Romberg signs. Tr. 27 (citing Tr. 423). Motor strength was 4-5/5 in all
5 extremities. *Id.* The ALJ found that Dr. Rose's findings do not support the level of
6 limitation Plaintiff alleged. Tr. 28. The ALJ noted that, also in January 2012,
7 Plaintiff saw Dr. Johnson for increased back pain. Plaintiff attributed the increase in
8 pain to stress. Dr. Johnson prescribed pain medication. Tr. 28 (citing Tr. 498). The
9 ALJ relied on little to no medical evidence of back pain until April 2013, when
10 Plaintiff complained of neck pain radiating to her left arm. Tr. 28 (citing Tr. 701).
11 At this time, Plaintiff declined a physical therapy referral; instead, she was given a
12 referral for an orthopedic assessment. Significantly, the ALJ noted the record is
13 devoid of evidence indicating that Plaintiff ever followed through with the
14 orthopedic referral. Tr. 28 (citing Tr. 702), indicating symptoms were less severe
15 than alleged. Moreover, the ALJ relied on records showing that, in December 2011,
16 Plaintiff left town to help care for her ill father, and reported no difficulty in doing
17 so. Tr. 27 (citing Tr. 418).

18 Because an ALJ may discount pain and symptom testimony based on lack of
19 medical evidence, as long as it is not the sole basis for discounting a claimant's
20

1 testimony, the ALJ did not err when he found Plaintiff's complaints exceeded and
2 were not supported by objective and physical exam findings.

3 2. *Lack of Objective Medical Evidence of Psychological Limitations*

4 Second, the ALJ found that the objective medical evidence did not support the
5 degree of psychological limitations alleged by Plaintiff. Tr. 28. As already noted,
6 subjective testimony cannot be rejected solely because it is not corroborated by
7 objective medical findings, but medical evidence is a relevant factor in determining
8 the severity of a claimant's impairments. *Rollins*, 261 F.3d at 857; *see also Burch*,
9 400 F.3d at 681.

10 The ALJ set out, in detail, the medical evidence regarding Plaintiff's
11 psychological impairments and ultimately concluded that her allegations were
12 inconsistent with the medical evidence. Specifically, the ALJ noted there is "a
13 significant difference of opinion between the accepted medical sources" as to
14 Plaintiff's mental limitations. Tr. 22. For instance, the ALJ noted reviewing
15 psychologist Edward Beaty, Ph.D., opined Plaintiff is mildly limited in daily
16 activities, moderately limited in social functioning and concentration, and has had no
17 episodes of decompensation. Tr. 22 (citing Tr. 93). In contrast, one of Plaintiff's
18 treating physicians, Dr. Bot, opined Plaintiff is moderately limited in daily activities,
19 moderately limited in social functioning, *markedly* limited in concentration, and had
20 experienced four or more episodes of decompensation. Tr. 22 (citing Tr. 446). In

1 further contrast, examining psychologist Dr. Bostwick opined Plaintiff is moderately
2 limited in daily activities, moderately limited in concentration, *markedly* limited in
3 social functioning, and had experienced four or more episodes of decompensation.
4 Tr. 22 (citing Tr. 461).

5 In considering Plaintiff's credibility in light of the contradictory opinion
6 evidence, the ALJ noted first, that although Plaintiff has a long history of reported
7 mental health symptoms, she was able to work despite her condition prior to onset,
8 suggesting these long-standing symptoms were not as limiting as alleged.¹ Tr. 28
9 (citing Tr. 347) (in May 2010 Plaintiff told Dr. Buzogany that she had battled
10 "affective destabilization since her teenage years").

11 Next, the ALJ relied on the observations of treating and examining sources
12 who noted essentially normal function. Tr. 28. For example, in May 2010, although
13 Plaintiff has a "rather intrusive manner," she was pleasant and cooperative; her
14 ¹Plaintiff contends the ALJ erred when he found she was able to work, even with
15 mental health symptoms, because she "was fired from a job for poor performance."
16 ECF No. 15 at 16 (citing Tr. 53, 61-62). The record contradicts Plaintiff's
17 statement. *See* Tr. 62 (Plaintiff admitted she worked at Geotech for over a year, and
18 ITT for over two years); Tr. 470 (Plaintiff said she worked as a waitress for six
19 years). The ALJ properly relied on evidence demonstrating that Plaintiff was able to
20 work despite mental health symptoms.

1 mood was anxious with pressured speech and loud volume; however, she also
2 exhibited normal motor functions; logical thought processes; good insight and
3 judgment; and normal intellect. Tr. 28 (citing Tr. 349). Plaintiff began counseling
4 and medication management. Tr. 28 (citing Tr. 349-50). As another example, the
5 ALJ noted at an evaluation for medication administration two months later, Plaintiff
6 was well kempt and appropriately attired; her mood was fair; speech was clear and
7 coherent; attention span and both remote and short-term memory were intact. Tr. 28
8 (citing Tr. 355). In February 2011, Dr. Zimberg noted Plaintiff “appeared in fair
9 spirits with some display of humor.” Tr. 28 (citing Tr. 334, 352).

10 The ALJ further explained that in October 2011, Jeanette Higgins, Psy.D.,
11 performed a psychological evaluation of Plaintiff. Tr. 29 (citing Tr. 384-87).
12 Plaintiff reported that her depressive symptoms were “the worst [they had] ever
13 been,” and she experienced suicidal ideation “all day, every day”; Tr. 29 (citing Tr.
14 384). Plaintiff also reported two suicide attempts in the previous six months; as the
15 ALJ pointed out, there is no record of medical treatment or evidence to support this
16 statement. *Id.* Moreover, although Plaintiff reported significant difficulty with
17 bathing, grooming, and housework due to depressive symptoms, Dr. Higgins
18 observed that Plaintiff’s grooming was adequate and speech was within normal
19 limits. Plaintiff exhibited no motor abnormalities, and her behavioral approach was
20 cooperative. Tr. 29 (citing Tr. 385). The ALJ credited Dr. Higgins’ opinion that

1 Plaintiff could likely function in a work environment that did not require interaction
2 with the public or contact with many co-workers. Tr. 29 (citing Tr. 386). The ALJ
3 noted that, at an evaluation about two months later, similar limitations were
4 assessed. Tr. 29 (citing Tr. 559-567). The minimal treatment history and lack of
5 objective findings do not support Plaintiff's allegations of disabling mental
6 limitations.

7 Here, the medical evidence of record was susceptible to more than one
8 rational conclusion, and therefore the ALJ's conclusion as to the inconsistencies
9 between Plaintiff's alleged impairments, and the overall record, must be upheld.

10 Because an ALJ may discount symptom testimony based on lack of medical
11 evidence, as long as it is not the sole basis for discounting a claimant's testimony,
12 the ALJ did not err when he found Plaintiff's complaints exceeded and were not
13 supported by objective and examination findings.

14 3. *Daily Activities*

15 Third, the ALJ found that the level of limitation that Plaintiff alleged was
16 inconsistent with her proven ability to engage in a variety of activities. Tr. 31. A
17 claimant's reported daily activities can form the basis for an adverse credibility
18 determination if they consist of activities that contradict the claimant's "other
19 testimony" or if those activities are transferable to a work setting. *Orn v. Astrue*,
20 495 F.3d 625, 639 (9th Cir. 2007); *see also Fair v. Bowen*, 885 F.2d 597, 603 (9th

1 Cir. 1989) (daily activities may be grounds for an adverse credibility finding “if a
2 claimant is able to spend a substantial part of his day engaged in pursuits involving
3 the performance of physical functions that are transferable to a work setting.”).
4 Here, the ALJ found, for example, that Plaintiff traveled to California in February
5 2011, Tr. 28 (citing Tr. 334); traveled to help care for her ill father in December
6 2011, Tr. 27, 29 (citing Tr. 418); attended classes all day at the Department of
7 Vocational Rehabilitation (DVR), Tr. 30 (citing Tr. 504); despite feeling “stressed
8 and fatigued” from the DVR classes, Plaintiff planned to start classes in 2012 to
9 obtain a bachelor’s degree, Tr. 30 (citing Tr. 518);² and as of September 2012 was in
10 fact attending school, Tr. 31. In addition, the record shows that Plaintiff did laundry,
11 housekeeping, meal preparation, shopping, played on her computer, worked on math
12 assignments on the computer, wrote short essays for an English class, watched
13
14

15 ² Plaintiff contends that the ALJ did not consider whether Plaintiff made the decision
16 to attend school during a manic episode. ECF No. 15 at 17. Given that Plaintiff
17 made the decision to start school in early 2012, and in fact, did start school more
18 than six months later, in September 2012, the Court finds that the ALJ did not need
19 to consider whether Plaintiff’s decision to start school was the result of a manic
20 episode.

1 television and was able to manage funds, Tr. 30; *see also* Tr. 421, which supported
2 the ALJ's finding.

3 "While a claimant need not vegetate in a dark room in order to be eligible for
4 benefits, the ALJ may discredit a claimant's testimony when the claimant reports
5 participation in everyday activities indicating capacities that are transferable to a
6 work setting" or when activities "contradict claims of a totally debilitating
7 impairment." *Molina*, 674 F.3d at 1112-13 (internal quotation marks and citations
8 omitted). The ALJ noted that Plaintiff's activities, including attending day long
9 DVR classes, as well as later expressed willingness to attend school, suggest that her
10 symptoms were not as limiting as alleged. Tr. 30 (citing Tr. 518). The range of both
11 physical and mental activities that Plaintiff reported is inconsistent with the
12 disabling limitations she alleged. The ALJ properly relied on daily activities that
13 exceed alleged limitations when he assessed Plaintiff's credibility.

14 4. *Inconsistencies in Plaintiff's Statements*

15 Fourth, in discrediting Plaintiff's symptom claims, the ALJ cited
16 inconsistencies in Plaintiff statements. Tr. 30. In making a credibility evaluation,
17 the ALJ may rely on ordinary techniques of credibility evaluation. *Smolen v.*
18 *Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). Contradiction with the medical record
19 is a sufficient basis for rejecting the claimant's subjective testimony. *Carmickle v.*
20 *Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008); *Johnson v.*

1 *Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995). Moreover, a strong indicator of
2 credibility is the consistency of the individual's own statements made in connection
3 with the claim for disability benefits and statements made to medical professionals.
4 S.S.R. 96-7p.

5 For example, in May 2012, Plaintiff reported that she had been abstinent from
6 alcohol for nine years. Tr. 30 (citing Tr. 466). However, the ALJ found this was
7 inconsistent with evidence that Plaintiff last drank in April 2011. Tr. 30 (citing Tr.
8 382) (Plaintiff reported that she last drank on April 17, 2011, and had last used
9 marijuana on May 17, 2011). The ALJ also found that less than a month after
10 Plaintiff reported to Dr. Rose that she had severe limitations in walking, sitting, and
11 standing, Tr. 421, she inconsistently reported to addiction recovery center personnel
12 that her physical health overall was "good." Tr. 27 (citing Tr. 435). Moreover,
13 Plaintiff reported to Dr. Higgins that she had two suicide attempts in the past six
14 months, but there was no objective evidence in the record to support such attempts.
15 Tr. 29. Also, Plaintiff reported to Dr. Higgins that she had significant difficulty with
16 bathing, grooming, and housework due to her depression, but Dr. Higgins observed
17 that Plaintiff appeared appropriately groomed at her appointment. Tr. 29.

18 The ALJ reasonably determined that Plaintiff's inconsistent statements
19 undermined her veracity as a witness. An ALJ may support her adverse credibility
20 finding by citing to inconsistencies in the claimant's testimony, prior inconsistent

1 statements, and general inconsistencies in the record. *Thomas*, 278 F.3d at 958-59
2 (inconsistencies in the claimant’s testimony is properly considered); *Tommasetti v.*
3 *Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (prior inconsistent statements may be
4 considered); *Molina*, 674 F.3d at 1112 (An ALJ may support an adverse credibility
5 finding by citing to general inconsistencies in the record).

6 *5. Failure to Seek Treatment as Recommended*

7 Last, the ALJ found that Plaintiff’s failure to follow treatment
8 recommendations diminished her credibility. Tr. 28, 31. For example, in April
9 2013, Plaintiff declined a physical therapy referral; instead she was given a referral
10 for an orthopedic assessment. The ALJ noted that the record contains no evidence
11 Plaintiff followed through on the referral. Tr. 28 (citing Tr. 702). Moreover,
12 Plaintiff’s refusal to see school counselors or participate in recommended group
13 therapy diminished her credibility. Tr. 31 (citing Tr. 666) (in February 2013
14 Plaintiff reported difficulty processing information at school and said she felt
15 hopeless and discouraged); (citing Tr. 728) (college requested that Plaintiff see
16 school counselors but Plaintiff refused, believing it would impact her privacy and
17 studies). Similarly, the ALJ noted that Tanya Keeble, M.D., evaluated Plaintiff in
18 June 2013. Tr. 31 (citing Tr. 728). Referring to Plaintiff’s self-reported two suicide
19 attempts in 2011, D. Keeble stated that Plaintiff’s collateral history suggested she
20 had used her prescription medication to “self-medicate into a stupor” Tr. 31 (citing

1 Tr. 728). Dr. Keeble also noted that Plaintiff was on a long list of psychotropic
2 medication that was “confounding” her status and might not be providing enough
3 benefit to justify its continuation. *Id.* Dr. Keeble instead opined that Plaintiff would
4 benefit from group therapy, but Plaintiff refused to do so, even though she qualified
5 for such services. Tr. 31 (citing Tr. 729). Unexplained or inadequately explained
6 failure to seek treatment or to follow a prescribed course of treatment are properly
7 considered when an ALJ assesses credibility. *Smolen*, 80 F.3d at 1284.

8 Plaintiff now essentially contends that the ALJ should have weighed the
9 conflicting evidence differently; for example, he should found Plaintiff’s
10 improvement with medication was short-lived, and providers’ comments about
11 Plaintiff’s adequate grooming and appearance did not demonstrate a lack of
12 symptoms. ECF No. 15 at 16. This Court disagrees. As the ALJ reasoned,
13 Plaintiff’s level of functioning is reflected in the ability to maintain grooming, attend
14 classes, and perform other daily tasks.

15 The ALJ, tasked with weighing contradictory evidence, set out a detailed and
16 thorough examination of the record, stated his interpretation of the evidence, and
17 made specific findings. Tr. 26-32. *See Batson v. Comm’r of Soc. Sec. Admin*, 359
18 F.3d 1190, 1193 (9th Cir. 2004) (“[T]he Commissioner’s findings are upheld if
19 supported by inferences reasonably drawn from the record . . . and if evidence exists
20 to support more than one rational interpretation, we must defer to the

1 Commissioner’s decision.”). Here, the ALJ’s interpretation of the medical evidence
2 is reasonable.

3 In sum, despite Plaintiff’s arguments to the contrary, the ALJ provided
4 specific, clear and convincing reasons, supported by the record, for rejecting
5 Plaintiff’s testimony. *See Ghanim*, 763 F.3d at 1163.

6 **B. Medical Opinion Evidence**

7 Next, Plaintiff faults the ALJ for discrediting the opinions of treating and
8 examining sources and crediting those of reviewing sources. ECF No. 15 at 18-20.

9 There are three types of physicians: “(1) those who treat the claimant (treating
10 physicians); (2) those who examine but do not treat the claimant (examining
11 physicians); and (3) those who neither examine nor treat the claimant but who
12 review the claimant’s file (nonexamining or reviewing physicians).” *Holohan v.*
13 *Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). “Generally,
14 a treating physician’s opinion carries more weight than an examining physician’s,
15 and an examining physician’s opinion carries more weight than a reviewing
16 physician’s.” *Id.* “In addition, the regulations give more weight to opinions that are
17 explained than to those that are not, and to the opinions of specialists concerning
18 matters relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).

19 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
20 reject it only by offering “clear and convincing reasons that are supported by

1 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

2 “However, the ALJ need not accept the opinion of any physician, including a
3 treating physician, if that opinion is brief, conclusory and inadequately supported by
4 clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin*, 554 F.3d 1219, 1228 (9th
5 Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
6 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may
7 only reject it by providing specific and legitimate reasons that are supported by
8 substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-31).

9 *1. Dr. Bot*

10 Psychiatrist David Bot, M.D., treated Plaintiff for about seven months, from
11 April 13, 2011 to November 3, 2011. Tr. 360-79, 388-98. Dr. Bot submitted
12 updated records in April 2012, Tr. 445-50, opining that Plaintiff would have marked
13 limitations with respect to concentration, persistence or pace, as well as numerous
14 moderate limitations; additionally, he opined that Plaintiff had suffered four or more
15 periods of decompensation of extended duration. Tr. 446, 448-50. As Plaintiff
16 acknowledges, the ALJ gave Dr. Bot’s opinions significant weight, yet did not credit
17 Dr. Bot’s “paragraph B” findings with respect to periods of decompensation. ECF
18 No. 15 at 18 (citing Tr. 22). As discussed below, the ALJ rejected the paragraph B
19 findings, and some of Dr. Bot’s other assessed limitations, because they are not
20 supported by Dr. Bot’s own findings nor by the evidence as a whole. Tr. 22.

1 This Court finds that the ALJ properly assigned Dr. Bot's April 2102 opinion,
2 with respect to paragraph "B" findings, as well as assessed limitations in activities of
3 daily living and concentration, less weight than other sources. Because Dr. Bot's
4 opinion was contradicted, *see* Tr. 22-25 (noting the significant difference of opinion
5 between the accepted medical sources), the ALJ need only to have given specific
6 and legitimate reasoning supported by substantial evidence to reject it. *Bayliss*, 427
7 F.3d at 1216.

8 *a. Assessed Limitations in Daily Activities*

9 First, the ALJ discounted Dr. Bot's opinion that Plaintiff's daily activities
10 were moderately limited because the record shows Plaintiff engaged in a variety of
11 daily activities with little or no difficulty, as previously discussed. Tr. 22, 28.
12 Plaintiff traveled to California in February 2011, Tr. 28 (citing Tr. 334); traveled to
13 help care for her ill father in December 2011, Tr. 27, 29 (citing Tr. 418); attended
14 classes all day at the Department of Vocational Rehabilitation (DVR), Tr. 30 (citing
15 Tr. 504); despite feeling "stressed and fatigued" from the DVR classes, Plaintiff
16 planned to start classes in 2012 to earn a bachelor's degree, Tr. 30 (citing Tr. 518);
17 and in fact, did begin attending school in September 2012, Tr. 31. The ALJ noted
18 that the record also shows that Plaintiff was casually dressed and groomed, Tr. 22
19 (citing Tr. 349); was well kempt and appropriately attired, Tr. 22 (citing Tr. 355);
20 reported she did laundry and cared for her cat. Tr. 22 (citing Tr. 385).

1 concentration. Tr. 24 (citing Tr. 446, 448-49). An ALJ may properly reject
2 opinions that are internally inconsistent. *Nguyen v. Chater*, 100 F.3d 1462, 1464
3 (9th Cir. 1996). An ALJ is not obliged to credit medical opinions that are
4 unsupported by the medical source’s own data or contradicted by the opinions of
5 other examining medical sources. *Tommasetti*, 533 F.3d at 1041.

6 *c. Paragraph “B” Criteria*

7 The ALJ properly relied on the inconsistency of Dr. Bot’s paragraph “B”
8 criteria with the record as a whole when he gave it little weight. *See Chaudhry v.*
9 *Astrue*, 688 F.3d 661, 671 (9th Cir. 2012) (“The ALJ need not accept the opinion of
10 any physician, including a treating physician, if that opinion is brief, conclusory, and
11 inadequately supported by clinical findings.”); *Batson*, 359 F.3d at 1195 (an ALJ
12 may discredit physicians’ opinions that are unsupported by the record as a whole)
13 (citation omitted).

14 The ALJ rejected Dr. Bot’s (and Dr. Bostwick’s) opinion that Plaintiff
15 suffered four episodes of decompensation of extended duration because neither
16 source explained the basis for the opinion, and it is unsupported by the record as a
17 whole. Tr. 22 (citing Tr. 446). The ALJ observed that the paragraph B criteria of
18 Listings 12.04, 12.06, and 12.08 require (as to each) mental impairments that result
19 in at least two of the following: marked restrictions of activities of daily living;
20 marked difficulties in maintaining social functioning; marked difficulties in

1 maintaining concentration, persistence or pace; or “repeated episodes of
2 decompensation, each of extended duration.” Tr. 22 (referring to 20 C.F.R. Part
3 404, Subpt. P, App. 2).

4 The record does not support Dr. Bot’s opinion that Plaintiff suffered four
5 extended episodes of decompensation. Tr. 22 (citing Tr. 446). Instead, the record
6 shows Plaintiff told Dr. Arnold that she had been hospitalized for a week in 1995.
7 Tr. 560. In December 2012, Plaintiff presented to the hospital with complaints of
8 suicidal ideation. She told providers that she had twice attempted suicide in 2011 by
9 overdosing on medication Tr. 24 (citing Tr. 736). However, at the same time, Dr.
10 Smith noted Plaintiff demonstrated a broad range of affect. She laughed and joked
11 with him and her significant other, and was discharged the same day. Tr. 24 (citing
12 Tr. 736). The ALJ pointed out that there is no evidence to substantiate the two
13 reported overdose attempts in 2011. Tr. 24. Moreover, even if credited, Plaintiff’s
14 statements do not meet the definition of “repeated episodes decompensation, each of
15 extended duration,” 20 C.F.R. Pt. 404, Subpt. P, App. 1 §§ 12.04; 12.06; 12.08,
16 defined as “three episodes within one year, or an average of once every four months,
17 each lasting for at least two weeks,” *id.* § 12.00C.4.

18 Because an ALJ may reject any opinion that is internally inconsistent, as well
19 as opinions that are inconsistent with the record as a whole, *Batson*, 359 F.3d at
20

1 1195, the ALJ provided another specific and legitimate reason for affording Dr.
2 Bot's paragraph B and functional assessment limited weight.

3 *2. Dr. Bostwick*

4 Allen Bostwick, Ph.D., evaluated Plaintiff in July 2012. Tr. 467-78. The ALJ
5 rejected some of Dr. Bostwick's assessed limitations, including, as discussed, his
6 paragraph B findings. Tr. 24-25. The ALJ discredited Dr. Bostwick's opinions for
7 substantially similar reasons as applied to Dr. Bot's opinions. Tr. 22.

8 The ALJ need only have provided specific and legitimate reasons for rejecting
9 Dr. Bostwick's opinion as it was contradicted by other sources, including Dr.
10 Higgins. *See Bayliss*, 427 F.3d at 1216.

11 *a. Unsupported by Source's Own Findings*

12 First, the ALJ discounted some of Dr. Bostwick's opinion because it was not
13 supported by his own findings. Tr. 22 (citing Tr. 461). For example, in July 2012
14 Dr. Bostwick opined that Plaintiff's social functioning was markedly limited, Tr.
15 461, yet in his RFC he assessed only moderate limitations in all of the categories that
16 rate limitations in social functioning except one, the ability to accept instructions and
17 respond appropriately to criticism from supervisors. Tr. 23 (citing Tr. 463-65). In
18 this sole area, Dr. Bostwick opined that Plaintiff's limitations were moderate to
19 marked. Tr. 23 (citing Tr. 463). An ALJ may properly reject opinions that are
20 internally inconsistent, *Nguyen*, 100 F.3d at 1464. An ALJ is not obliged to credit

1 medical opinions that are unsupported by the medical source's own data and/or
2 contradicted by the opinions of other examining medical sources. *Tommasetti*, 533
3 F.3d at 1041.

4 *b. Inconsistent With Record as a Whole*

5 Second, the ALJ properly relied on the inconsistency of Dr. Bostwick's
6 assessed marked social limitations with the record as a whole when he gave it little
7 weight. *See Batson*, 359 F.3d at 1195 (an ALJ may discredit the physicians'
8 opinions that are unsupported by the record as a whole) (citation omitted).

9 The ALJ found that the record as a whole supports moderate, rather than
10 marked, limitations in social functioning. Tr. 22-23 (citing Tr. 461, 472) (Dr.
11 Bostwick noted that Plaintiff is socially cooperative and generally pleasant during
12 the evaluation; she presented in no acute emotional distress; her mood was
13 euthymic; and she had a bright affect). The ALJ acknowledged that Plaintiff's
14 bipolar disorder has caused some social limitations, including reports by providers
15 that, at times, Plaintiff was hypomanic; however, the bulk of the remaining evidence
16 supports no more than moderate social limitation. For instance, Plaintiff reported
17 that she was able to leave home by herself, Tr. 23 (citing Tr. 215), and providers
18 reported that she arrived at appointments unaccompanied, Tr. 23 (citing Tr. 472,
19 554).

1 Additionally, the ALJ found that Plaintiff’s ability to maintain a romantic
2 relationship with a significant other, despite alleging that she has mental
3 impairments that limit her ability to get along with others, indicates Plaintiff
4 experiences no more than moderate social limitations. Tr. 23 (citing Tr. 217)
5 (Plaintiff reported that she shopped with her friend during off hours because anxiety
6 made it difficult for her to be around other people). Because the ALJ may discount
7 an opinion that is inconsistent with a claimant’s reported functioning, *Morgan*, 169
8 F.3d at 601-02, the ALJ provided another specific, legitimate reason for affording
9 Dr. Bostwick’s opinion limited weight.

10 *c. Paragraph “B” Criteria*

11 Finally, as noted, the ALJ considered Dr. Bostwick’s paragraph “B’ finding.
12 Dr. Bostwick, like Dr. Bot, completed this assessment on a standardized check-box
13 form with no support or explanation for the opinion. Dr. Bostwick did not elaborate
14 on what episodes of decompensation Plaintiff had experienced. Tr. 24 (citing Tr.
15 461). Given, as noted, the paucity of evidence of any episodes of decompensation,
16 the ALJ suggested that in order to adopt the decompensation findings assessed by
17 both Dr. Bot and Dr. Bostwick, the ALJ would have to credit Plaintiff’s unreliable
18 self-report. Tr. 24-25 (citing Tr. 461). Because an ALJ may discount an opinion
19 that is largely based on a claimant’s unreliable self-report, *Tommasetti*, 533 F.3d at
20 1041, and may properly discount an opinion that is unsupported by clinical findings,

1 *Batson*, 359 F. 3d at 1195, the ALJ provided additional specific and legitimate
2 reasons for affording Dr. Bostwick’s opinion, including his paragraph “B”
3 assessment, limited weight.

4 *3. Dr. Rosekrans*

5 Frank Rosekrans, Ph.D., evaluated Plaintiff in September 2012 and assessed
6 severe limitations. Tr. 24 (citing Tr. 553). Specifically, Dr. Rosekrans opined that
7 Plaintiff’s ability to perform activities within a schedule, maintain regular
8 attendance, be punctual within customary tolerances, and complete a normal
9 workday and workweek without interruptions from psychologically based symptoms
10 were severe. Tr. 24 (citing Tr. 553). The ALJ rejected this limitation, in part, based
11 on the opinions of Dr. Beaty and Dr. Bostwick, who both found Plaintiff was
12 moderately limited with respect to concentration, persistence, or pace. Tr. 24 (citing
13 Tr. 93, 461). Because Dr. Rosekrans’s opinion is contradicted, the ALJ need only
14 have provided specific and legitimate reasons for rejecting it. *See Bayliss*, 427 F.3d
15 at 1216.

16 *a. Unsupported by Source’s Own Findings*

17 First, the ALJ assigned little weight to Dr. Rosekrans’s assessed severe
18 limitation in the areas of concentration, persistence, or pace, because it was
19 inconsistent with Dr. Rosenkrans’ other findings. Tr. 24 (citing Tr. 553). In
20 September 2012, Dr. Rosekrans assessed severe limitations, defined as an inability

1 to perform the activity other than in a sheltered workshop, in the areas of (1)
2 performing activities within a schedule, maintaining regular attendance, and being
3 punctual within customary tolerances without special supervision; and (2)
4 completing a normal workday and workweek without interruptions from
5 psychologically based symptoms. Yet in the same evaluation, Dr. Rosekrans opined
6 Plaintiff's functioning in the same category was "no limitation," "mild limitation,"
7 or "moderate limitation." Tr. 24 (citing Tr. 553). An ALJ is not required to credit
8 medical opinions that are unsupported by the source's own data and/or contradicted
9 by the opinions of other examining medical sources. *Tommasetti*, 533 F.3d at 1041.

10 *b. Assessed Severe Limitations Unsupported by Record as a Whole*

11 Next, the ALJ properly relied on the inconsistency of Dr. Rosekrans' assessed
12 severe limitations with the record as a whole when he gave it little weight. Tr. 23-24
13 (citing Tr. 553). The ALJ rejected these limitations, in part, based on the opinions of
14 Dr. Beaty and Dr. Bostwick, who both found Plaintiff was moderately limited with
15 respect to concentration, persistence, or pace. Tr. 24 (citing Tr. 93, 461). Further,
16 Dr. Bostwick noted that Plaintiff had a low average working memory and mild to
17 moderate impairment on the Trails B test, but her attention in social concentration
18 was within functional limits. Tr. 24 (citing Tr. 473).

19 Because an ALJ is not required to credit any medical opinion that is
20 unsupported by the record as a whole, *Batson*, 359 F.3d at 1195, the ALJ provided

1 another specific and legitimate reason for affording Dr. Rosekrans’s opinion limited
2 weight.

3 *4. Reviewing Sources*

4 Next, Plaintiff contends the ALJ erred by “accepting consulting source
5 opinions over the examining physicians’ opinions.” ECF No. 15 at 20. Plaintiff
6 does not argue with specificity that the ALJ improperly relied solely on specific
7 unnamed consulting source opinions to justify rejecting certain medical opinions.
8 Thus, the Court declines to address this issue. *See Carmickle*, 533 at 1161 n.2.

9 Last, Plaintiff contends that “had the aforementioned [treating and examining]
10 opinions been properly considered,” the RFC would be assessed differently. ECF
11 No. 15 at 21. The Court has previously addressed this contention and found no
12 error.

13 **CONCLUSION**

14 After review, the Court finds that the ALJ’s decision is supported by
15 substantial evidence and free of harmful legal error.

16 **IT IS ORDERED:**

- 17 1. Defendant’s motion for summary judgment (ECF No. 17) is **GRANTED**.
18 2. Plaintiff’s motion for summary judgment (ECF No. 15) is **DENIED**.

19 The District Court Executive is directed to file this Order, enter **JUDGMENT**
20 **FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE** the file.

1 DATED this 17th day of August, 2016.

2 S/Mary K. Dimke
3 MARY K. DIMKE
4 UNITED STATES MAGISTRATE JUDGE
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