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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BRIDGETTE J. HUARD-HIGGINS,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Acting Commissioner of Social  
Security,

Defendant.

No. 1:14-CV-03029-RHW

**ORDER GRANTING  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT**

Before the Court are the parties’ cross-motions for summary judgment, ECF Nos. 12 & 16. Thomas Bothwell represents Bridgette J. Huard-Higgins (“Plaintiff” or “Claimant”), and Special Assistant United States Attorney Daphne Banay represents Defendant Commissioner of Social Security (the “Commissioner”). Plaintiff brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner’s final decision, which denied her application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II & XVI of the Social Security Act, 42 U.S.C §§ 401-

1 434 & 1381-1383F . After reviewing the administrative record and briefs filed by  
2 the parties, the Court is now fully informed. For the reasons set forth below, the  
3 Court grants Defendant’s Motion for Summary judgment, and directs entry of  
4 judgment in favor of Defendant.

5 **I. Jurisdiction**

6 Plaintiff filed concurrent applications for DIB and SSI on January 4, 2011.  
7 Tr. 192-205. Plaintiff’s application was initially denied on July 26, 2011, Tr. 127-  
8 130, and on reconsideration on September 7, 2011. Tr. 134-144. Plaintiff filed a  
9 written request for hearing on September 13, 2011. Tr. 146-147. On October 11,  
10 2012, Administrative Law Judge (“ALJ”) Laura Valente held a video hearing in  
11 Seattle, Washington. Tr. 31-74. On November 7, 2012, the ALJ issued a decision  
12 finding Plaintiff ineligible for SSI and DIB payments. Tr. 14-25. The Appeals  
13 Council denied Plaintiff’s request for review on January 22, 2014, Tr. 1-3, making  
14 the ALJ’s ruling the “final decision” of the Commissioner. Plaintiff timely filed  
15 the present action challenging the denial of benefits, and accordingly, Plaintiff’s  
16 claims are properly before this Court pursuant to 42 U.S.C. § 405(g).

17 **II. Sequential Evaluation Process**

18 The Social Security Act defines disability as the “inability to engage in any  
19 substantial gainful activity by reason of any medically determinable physical or  
20 mental impairment which can be expected to result in death or which has lasted or

1 can be expected to last for a continuous period of not less than twelve months.” 42  
2 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be  
3 under a disability only if the claimant’s impairments are of such severity that the  
4 claimant is not only unable to do his previous work, but cannot, considering  
5 claimant's age, education, and work experience, engage in any other substantial  
6 gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) &  
7 1382c(a)(3)(B).

8 The Commissioner has established a five-step sequential evaluation process  
9 for determining whether a claimant is disabled within the meaning of the Social  
10 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*  
11 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

12 Step one inquires whether the claimant is presently engaged in “substantial  
13 gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful  
14 activity is defined as significant physical or mental activities done or usually done  
15 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in  
16 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§  
17 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

18 Step two asks whether the claimant has a severe impairment, or combination  
19 of impairments, that significantly limits the claimant’s physical or mental ability to  
20 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe

1 impairment is one that has lasted or is expected to last for at least twelve months,  
2 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &  
3 416.908-09. If the claimant does not have a severe impairment, or combination of  
4 impairments, the disability claim is denied, and no further evaluative steps are  
5 required. Otherwise, the evaluation proceeds to the third step.

6 Step three involves a determination of whether any of the claimant's severe  
7 impairments "meets or equals" one of the listed impairments acknowledged by the  
8 Commissioner to be sufficiently severe as to preclude substantial gainful activity.  
9 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;  
10 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or  
11 equals one of the listed impairments, the claimant is *per se* disabled and qualifies  
12 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to  
13 the fourth step.

14 Step four examines whether the claimant's residual functional capacity  
15 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f)  
16 & 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant  
17 is not entitled to disability benefits and the inquiry ends. *Id.*

18 Step five shifts the burden to the Commissioner to prove that the claimant is  
19 able to perform other work in the national economy, taking into account the  
20 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),

1 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this  
2 burden, the Commissioner must establish that (1) the claimant is capable of  
3 performing other work; and (2) such work exists in “significant numbers in the  
4 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,  
5 676 F.3d 1203, 1206 (9th Cir. 2012).

### 6 **III. Standard of Review**

7 A district court's review of a final decision of the Commissioner is governed  
8 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the  
9 Commissioner's decision will be disturbed “only if it is not supported by  
10 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,  
11 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than  
12 a mere scintilla but less than a preponderance; it is such relevant evidence as a  
13 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*  
14 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d  
15 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining  
16 whether the Commissioner’s findings are supported by substantial evidence, “a  
17 reviewing court must consider the entire record as a whole and may not affirm  
18 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*  
19 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879  
20 F.2d 498, 501 (9th Cir. 1989)).

1 In reviewing a denial of benefits, a district court may not substitute its  
2 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
3 1992). If the evidence in the record “is susceptible to more than one rational  
4 interpretation, [the court] must uphold the ALJ's findings if they are supported by  
5 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,  
6 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9<sup>th</sup> Cir.  
7 2002) (if the “evidence is susceptible to more than one rational interpretation, one  
8 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,  
9 a district court “may not reverse an ALJ's decision on account of an error that is  
10 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is  
11 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.  
12 The burden of showing that an error is harmful generally falls upon the party  
13 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

#### 14 **IV. Statement of Facts**

15 The facts of the case are set forth in detail in the transcript of proceedings,  
16 and only briefly summarized here. Plaintiff was 39 years old as of her alleged onset  
17 date of disability. Tr. 192. Plaintiff has a high school education, plus  
18 approximately six years of college education. Tr. 38. Her past relevant experience  
19 includes work as a social services coordinator, a social worker, an eligibility  
20 worker, an adult education teacher, and a banquet server. Tr. 23.

1 Plaintiff alleges she is unable to work due to physical and mental  
2 impairments, including gastrointestinal problems, fibromyalgia, post-traumatic  
3 stress disorder (“PTSD”), depression, and anxiety. Tr. 35-38. Plaintiff reports a  
4 history of abuse in childhood and adulthood that has resulted in sleep disorders. Tr.  
5 37.

#### 6 **V. The ALJ’s Findings**

7 The ALJ determined that Plaintiff was not disabled under the Act and denied  
8 her SSI and DIB applications, which were filed on January 4, 2011. Tr. 14-25.

9 **At step one**, the ALJ found that Plaintiff had not engaged in substantial  
10 gainful activity since December 27, 2010, her alleged onset date. Tr. 16 (citing 20  
11 C.F.R. §§ 404.1571 *et seq.* & 416.971 *et seq.*).

12 **At step two**, the ALJ found Plaintiff had the following severe impairments:  
13 gastroparesis, contusions secondary to a motor vehicle accident, affective disorder,  
14 and anxiety disorder. Tr. 16-17. (citing 20 C.F.R. §§ 404.1520(c) & 416.920(c)).  
15 Tr. 28.

16 **At step three**, the ALJ found that Plaintiff did not have an impairment or  
17 combination of impairments that meets or medically equals the severity of one of  
18 the listed impairments in 20 C.F.R. §§ 404, Subpt. P, App. 1 (the “Listings”),  
19 416.925, and 416.926 . Tr. 17.

1           At **step four**, relying on the vocational expert’s testimony, the ALJ found  
2 Plaintiff had the residual functional capacity (“RFC”) to perform a range of light  
3 work as defined in 20 CFR §§ 404.1567(b) and 416.967(b) except to perform tasks  
4 that involve about six hours of sitting and about six hours of standing/walking in  
5 an eight hour day. Tr. 19. The ALJ found Plaintiff able to occasionally climb  
6 ladders, ropes, and scaffolds, and she can frequently kneel; however, she cannot  
7 experience concentrated exposure to heat or cold, vibration, or workplace hazards.  
8 *Id.* The ALJ found Plaintiff could sufficiently concentrate, understand, remember,  
9 and carry out simple, routine tasks and detailed tasks during two-hour increments  
10 with customary breaks. *Id.* She was also found able to interact occasionally with  
11 supervisors and the general public. *Id.*

12           Thus, the ALJ concluded that Plaintiff is capable of performing past relevant  
13 work as a social services coordinator, a social worker, an eligibility worker, an  
14 adult education teacher, and a banquet server because the work does not require the  
15 performance of work related activities precluded by Plaintiff’s residual functional  
16 capacity. Tr. 23.

17           At **step five**, and in the alternative, the ALJ also found that after considering  
18 her age, education, work experience, and RFC, there are other jobs that exist in  
19 significant numbers in the national economy that Plaintiff can also perform. Tr. 24.

20 ///



1 **VI. Issues for Review**

2 Plaintiff argues that the Commissioner’s decision is not free of legal error  
3 and not supported by substantial evidence. ECF No. 12. More specifically, Plaintiff  
4 alleges that the ALJ erred by: (1) improperly rejecting the opinion of Plaintiff’s  
5 examining medical providers; (2) failing to conduct an adequate step four analysis;  
6 and (3) failing to meet her step five burden to identify specific jobs, available in  
7 significant numbers, which Plaintiff could perform in light of her specific  
8 functional limitations. ECF No. 12 at 7.

9 **VII. Discussion**

10 **A. The ALJ Properly Rejected the Opinions of Plaintiff’s Treating and**  
11 **Examining Medical Providers.**

12 **1. Legal Standard.**

13 The Ninth Circuit has distinguished between three classes of medical  
14 providers in defining the weight to be given to their opinions: (1) treating  
15 providers, who actually treat the claimant; (2) examining providers, who examine  
16 but do not treat the claimant; and (3) non-examining providers, who neither treat  
17 nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995).

18 A treating provider’s opinion is given the most weight, followed by an  
19 examining provider, and finally a non-examining provider. *Id.* at 803-31. In the  
20 absence of a contrary opinion, a treating or examining provider’s opinion may not

1 be rejected unless “clear and convincing” reasons are provided. *Id.* at 830. If a  
2 treating or examining provider’s opinion is contradicted, it may only be discounted  
3 for “specific and legitimate reasons that are supported by substantial evidence in  
4 the record.” *Id.* at 830-31.

5 The ALJ may meet the specific and legitimate standard by “setting out a  
6 detailed and thorough summary of the facts and conflicting clinical evidence,  
7 stating his interpretation thereof, and making findings.” *Magallanes v. Bowen*, 881  
8 F.2d 747, 751 (9<sup>th</sup> Cir. 1989) (internal citation omitted). When rejecting a treating  
9 provider’s opinion on a psychological impairment, the ALJ must offer more than  
10 her own conclusions and explain why she, as opposed to the provider, is correct.  
11 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9<sup>th</sup> Cir. 1988).

12 **2. The ALJ provided specific and legitimate reasons for rejecting the**  
13 **providers’ opinions based on substantial evidence in the record.**

14 The opinions at issue in this review include two treating physicians, Drs.  
15 Lindgren and Warninger; one examining physician, Dr. Torres-Saenz; one  
16 examining nurse practitioner, Ms. Hoeniges; and non-examining state medical and  
17 psychological experts. The opinions regarding Plaintiff’s ability to perform  
18 relevant work are contradictory. Thus, the “specific and legitimate” standard  
19 applies.

20 **a. The opinions of Drs. Lindgren and Warninger.**

1 Two of Plaintiff's treating physicians, Dr. Lindgren and Dr. Warninger,  
2 provided opinions that they do not believe Plaintiff is capable of performing any  
3 work on a routine, continuous, and sustained basis. TR. 581, 591. The ALJ based  
4 her rejection of these opinions because they are inconsistent with the medical  
5 record and because "the question of whether an individual is disabled (or able to  
6 work) is outside the medical realm." Tr. 22.

7 Further, the opinions in controversy were the result of questionnaires  
8 provided to the physicians by Plaintiff's attorney. Tr. 580-81, 590-91. The  
9 questionnaires did not provide explanations for the opinions, but the doctors were  
10 limited only to check a box indicating the level of work they believed the Claimant  
11 was capable of performing. *Id.* The ALJ was unpersuaded by these questionnaires  
12 not only because they lacked elaboration, but because they were inconsistent with  
13 the medical records.

14 In her ruling, the ALJ pointed to multiple instances in the medical record  
15 and testimony of Plaintiff and her mother at the hearing that demonstrate Plaintiff's  
16 ability to manage multiple physical, social, and mental functions. These included:  
17 grocery shopping, light household chores and meal preparation, caring for her  
18 personal hygiene, picking her son up from school, attending his school plays,  
19 writing, scrapbooking, and working out at a gym. Tr. 20-22. Based on these  
20

1 activities, the ALJ found that the Claimant was reasonably able to do light work  
2 because medication allowed her to manage a variety of daily affairs. Tr. 22.

3 The ALJ also noted instances where the doctors' own records contradicted  
4 the opinion that Plaintiff was unable to perform any type of regular work. For  
5 example, in an August 2012 report, Dr. Lindgren noted the Claimant's medication  
6 regimen enabled her to function during the day with regular breaks. Tr. 471. This  
7 information was particularly persuasive to the ALJ, who also noted that this was  
8 contrary to the Claimant's allegation that she must spend several hours lying down  
9 per day. Tr. 21.

10 To the extent that there is more than one rational interpretation of the record,  
11 the ALJ's findings must be upheld when, as here, they are supported by reasonably  
12 drawn inferences. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). ("Even  
13 when the evidence is susceptible to more than one rational interpretation, we must  
14 uphold the ALJ's findings if they are supported by inferences reasonably drawn  
15 from the record"). The ALJ cited to specific and legitimate evidence in the medical  
16 record to properly explain her decision to reject the opinions of Drs. Lindgren and  
17 Warninger that the Claimant was unable to perform any consistent work.<sup>1</sup>

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20 <sup>1</sup> The ALJ's assertion that the providers cannot give opinions on the ultimate  
issue of disability is inaccurate, see *Reddick v. Chater*, 157 F.3d 715 (9<sup>th</sup>  
Cir. 1998), but because the ALJ provided specific and legitimate reasons  
supported by substantial evidence on the record to reject the opinions, this  
error was harmless and further explanation is unnecessary.

1           **b. Dr. Torres-Saenz’ opinion.**

2 Plaintiff asserts that the ALJ erred when she gave partial weight to the assessment  
3 of examining psychologist Dr. Torres- Saenz. ECF No. 12 at 15. However, in her  
4 ruling, the ALJ pointed to multiple examples in the record and also explained that  
5 Dr. Torres-Saenz’ opinion “appears to rely uncritically on the claimant’s own  
6 report.” Tr. 22.

7           While Dr. Torres-Saenz does note some physical and mental limitations, his  
8 records generally demonstrate Plaintiff’s ability to function. Tr. 347-352. In his  
9 report, Dr. Torres-Saenz found Plaintiff to be independent in self-care and able to  
10 manage her own finances. Tr. 347-349. Plaintiff showed no memory or  
11 concentration problems during testing. Tr. 349. Dr. Torres-Saenz noted that she  
12 had “some difficulty” finishing her daily activities in a timely manner, but she was  
13 able to complete tasks. Tr. 350. The ALJ also took special note of the records from  
14 Dr. Torres-Saenz that reflect the Claimant’s ability to concentrate on hobbies, such  
15 as writing and scrapbooking. Tr. 21; 350.

16           The ALJ also pointed to the contradictory findings of Dr. Lindgren that the  
17 Claimant’s medication allowed her to “generally function during the day,” and that  
18 both the Claimant and her mother testified that she “generally finishes what she  
19 starts.” *Id.* This contradicts Dr. Torres-Saenz’ opinion that Plaintiff is unable to  
20 perform any work.

1 In her ruling, the ALJ provided specific and legitimate reasons that is  
2 substantiated by the record to give only partial weight to Dr. Torres-Saenz' opinion  
3 that Plaintiff was unable to perform any work. The Court will not disturb the ALJ's  
4 decision regarding Dr. Torres-Saenz' opinion.

5 **c. Ms. Hoeniges' opinion.**

6 Pursuant to *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir.1993), an ALJ is  
7 obligated to give reasons germane to "other source" testimony before discounting  
8 it. "Other sources" include nurse practitioners. 20 C.F.R. §§ 404.1513(d),  
9 416.913(d). Defendant concedes that the ALJ did not address or provide any  
10 reasons to reject the opinion of Advanced Registered Nurse Practitioner  
11 ("A.R.N.P.") Robin Hoeniges. ECF No. 16 at 14. Ms. Hoeniges opined that the  
12 Claimant suffered from gastroparesis, had chronic pain and fatigue, could not sit  
13 for extended periods of time, was unable to participate in work activities, and was  
14 limited to sedentary work. Tr. 341-42. Defendant asserts this was harmless error  
15 and insufficient to result in remand. ECF No. 16 at 14.

16 An error may be considered harmless where it "occurred during an  
17 unnecessary exercise or procedure"; is non-prejudicial to the Plaintiff; is  
18 considered irrelevant to the determination of non-disability; or if the reviewing  
19 court can "confidently conclude" that no reasonable ALJ could have reached a  
20

1 different disability determination if erroneously disregarded testimony was  
2 credited. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1056 (9th Cir. 2006).

3         Reviewing the total record, the ALJ’s omission of analysis of Ms. Hoeniges’  
4 opinion, while improper, was also harmless. As detailed previously, the ALJ cited  
5 numerous facts to support her decision to reject the opinions of Drs. Lindgren and  
6 Warninger that the Claimant was unable to perform any work. Ms. Hoeniges’  
7 opinion actually does qualify the Claimant to complete some work, at the  
8 “sedentary” level. Tr. 341-42. The reasons provided to reject the opinions of the  
9 treating physicians would be adequate to reject the opinion of Ms. Hoeniges, and  
10 the failure to address her opinion was harmless error.

11         **B. The ALJ properly conducted a Step-Four analysis.**

12         Plaintiff asserts that the ALJ failed to properly conduct the step four analysis  
13 by: (1) erring in the finding of Plaintiff’s residual functional capacity (“RFC”) by  
14 failing to include all of Plaintiff’s limitations; (2) failing to identify the specific  
15 demands of Plaintiff’s past relevant work and then failing to properly compare the  
16 specific demands with her specific functional limits; and (3) failing to follow the  
17 recommendations of the State’s experts, even though the ALJ gave great weight to  
18 their opinions. ECF No. 12 at 17-18.

19         **1. The ALJ properly considered all of the Claimant’s limitations in her RFC**  
20 **finding.**

1           The ALJ found that the Claimant was capable of light work, as defined in 20  
2 CFR §§ 404.1567(b) and 416.967(b) with some limitations. Tr. 19. The ALJ  
3 considered all of the limitations mentioned in the Claimant’s initial application,  
4 including gastroparesis, fibromyalgia, PTSD, anxiety, and depression, as well as  
5 injuries stemming from a motor vehicle accident that occurred after the initial  
6 application. Tr. 20-21. The ALJ’s determination of the RFC based on these  
7 complaints was limited by the Claimant’s credibility with regard to the intensity,  
8 persistence, and limiting effects, particularly with regard to pain. *Id.*

9           A claimant’s credibility regarding subjective pain or symptoms is analyzed  
10 through a two-step process. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir.  
11 2008). First, the claimant must produce objective medical evidence of an  
12 underlying impairment or impairments that could reasonably be expected to  
13 produce some degree of the symptoms alleged. *Id.* Second, if the claimant meets  
14 this threshold, and there is no affirmative evidence suggesting malingering, “the  
15 ALJ can reject the claimant’s testimony about the severity of her symptoms only  
16 by offering specific, clear and convincing reasons for doing so.” *Id.*

17           In weighing a claimant's credibility, the ALJ may consider many factors,  
18 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's  
19 reputation for lying, prior inconsistent statements concerning the symptoms, and  
20 other testimony by the claimant that appears less than candid; (2) unexplained or



1 inadequately explained failure to seek treatment or to follow a prescribed course of  
2 treatment; and (3) the claimant's daily activities.” *Smolen v. Chater*, 80 F.3d 1273,  
3 1284 (9th Cir.1996).

4 The first step was satisfied because the ALJ determined that Plaintiff had  
5 medically determinable impairments that could be reasonably expected to cause  
6 the alleged symptoms. Tr. 20. However, at the second step, the ALJ found the  
7 Claimant to not be entirely credible.

8 The ALJ pointed to multiple, specific instances of inconsistency between the  
9 record and Plaintiff’s testimony. In the hearing, Plaintiff stated that she could only  
10 lift a gallon of milk with two hands, Tr. 52, yet she also acknowledged exercising  
11 at a gym. Tr. 51. The ALJ noted the list of regular activities the Claimant is able to  
12 do, which were corroborated by her medical records. *Supra* p. 9. Of particular  
13 concern regarding credibility, the ALJ pointed to the inconsistency between  
14 Plaintiff’s testimony at the hearing that she must lay down for up to six hours per  
15 day and her statements to Dr. Lindgren that she could function during the day with  
16 her medication, despite occasional fatigue. Tr. 21.

17 Plaintiff also asserts error in the ALJ’s RFC computation with reference to  
18 her status-post shoulder arthroscopy. The ALJ found in her Step Two analysis the  
19 injury was not likely to cause functional limitations beyond twelve months. Tr. 17.  
20 Further, the record demonstrates Plaintiff had repeated visits to Dr. Lindgren

1 following the procedure that document numerous complaints, but the shoulder is  
2 not mentioned. Tr. 470-78.<sup>2</sup> It is reasonable, based on the record, to conclude the  
3 shoulder procedure does not alter the RFC finding made by the ALJ, regardless of  
4 whether she specifically cited it in her Step Four analysis.

5 **2. The ALJ did not err in determining Plaintiff could perform past relevant**  
6 **work.**

7 In reaching her decision, the ALJ relied on Dictionary of Occupational Titles  
8 (“DOT”) classifications and determined that the Claimant is able to perform past  
9 relevant work as it is actually and generally performed. Tr. 23. Claimant argues  
10 that the DOT was insufficient to determine whether she could perform the mental  
11 demands of the past work and that “the DOT did not contain all of the mental  
12 requirements of the past relevant work.” ECF No. 19 at 8. However, Claimant  
13 offers no examples of mental limitations or demands that would preclude her past  
14 relevant work that were not addressed by the DOT.

15 The record indicates that Vocational Expert, Trevor Duncan, provided  
16 testimony that the Claimant could perform her past relevant work as a social

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17  
18 <sup>2</sup> Plaintiff does not assign error regarding her status-post shoulder  
19 arthroscopy to the ALJ’s finding at Step Three. As a result, any error in the  
20 ALJ’s finding at Step Two is harmless, provided she considered functional  
limitations arising from that impairment when determining Plaintiff’s RFC.  
See 20 CFR §§ 404.1545(a)(2) & 416.945(a)(2) (requiring an ALJ to consider  
all medically determinable impairments when determining a claimant’s residual  
functional capacity); see also *Lewis v. Astrue*, 498 F.3d 909, 910 (9th Cir.  
2007) (holding that failure to consider an impairment at step two is harmless  
error where the ALJ includes limitations arising from that impairment in his  
or her determination of the claimant’s residual functional capacity).

1 services worker, a social worker, an eligibility worker, an adult education teacher,  
2 and a banquet server, as defined by the DOT. TR. 69-71. Mr. Duncan formulated  
3 this opinion based on the hypothetical presented by the ALJ after calculating the  
4 Claimant's RFC. *Id.*

5 Further, Mr. Duncan's testimony refutes Plaintiff's argument that the ALJ  
6 disregarded the opinion of the State's non-examining experts on Plaintiff's ability  
7 to work, despite giving strong weight to the same opinions to determine her RFC.  
8 ECF No. 12 at 18. The hypothetical posed to Mr. Duncan was created from the  
9 assessments provided by the State's experts. Tr. 69-71; 79-100. In her decision, the  
10 ALJ noted that she accepted Mr. Duncan's testimony as credible. Tr. 23.

11 The Court recognizes that the ALJ provides little explanation as to why she  
12 found Plaintiff could perform relevant past work, but the record demonstrates that  
13 there was sufficient evidence for such a finding. Further, if there was an error, the  
14 ALJ correctly proceeded in the alternative in step five, and the error would be  
15 harmless.

16 **C. The ALJ did not fail to meet her burden to identify specific jobs,**  
17 **available in significant numbers, which Plaintiff could perform in light**  
18 **of her specific functional limitations.**

1           The burden in step five shifts to the Commissioner to identify the specific  
2 jobs that exist in substantial numbers in the national economy that the claimant can  
3 perform despite the claimant's specific functional limitations. *Johnson v. Shalala*,  
4 60 F.3d 1428, 1432 (9th Cir. 1995). When a hypothetical posed to a vocational  
5 expert includes all the limitations that the ALJ finds credible and is supported by  
6 substantial evidence in the record, the ALJ's reliance on the testimony of the  
7 vocational expert is proper. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir.  
8 2005).

9           Plaintiff argues that the Defendant failed to meet its burden because the  
10 vocational testimony the ALJ relied on was in response to an incomplete  
11 hypothetical. ECF No. 12 at 19. However, as discussed above, the ALJ properly  
12 considered the credibility of the Claimant and exclusion of her testimony about her  
13 limitations was not in error. Likewise, the ALJ properly rejected the opinions of  
14 Drs. Lindgren and Warninger that were inconsistent with the record and need not  
15 include those limitations in the hypothetical. The ALJ is only required to provide a  
16 RFC finding that is consistent with the medical record. *Turner v. Comm'r of Soc.*  
17 *Sec. Admin.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010). The hypothetical posed was  
18 modeled off the limitations provided by the State's experts that the ALJ found to  
19 be credible and consistent with the record. Tr. 22-23; 69-71; 79-100.

1 With regard to the ALJ's step five analysis, the Court finds that the ALJ  
2 made proper findings free from legal error and supported by substantial evidence  
3 in the record. As previously stated, to the extent that her step four findings were  
4 not specific enough to Plaintiff's past relevant work, any error is harmless because  
5 of the ALJ's proper step five analysis.

### 6 **VIII. Conclusion**

7 Based on the foregoing, the Court finds the Commissioner's decision is free  
8 of legal error and supported by substantial evidence. Therefore, Defendant's  
9 Motion for Summary Judgment is granted.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

12 2. Defendant's Motion for Summary Judgment, **ECF No. 16**, is

13 **GRANTED.**

14 3. The District Court Executive is directed to enter judgment in favor of  
15 Defendant and against Plaintiff.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
17 Order, forward copies to counsel and **close the file**.

18 **DATED** this 23rd day of November, 2015.

19  
20 *s/Robert H. Whaley*  
**ROBERT H. WHALEY**  
Senior United States District Judge