

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Dec 27, 2018**

SEAN F. MCAVOY, CLERK

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NELIDA C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:18-CV-03071-RHW

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

Before the Court are the parties’ cross-motions for summary judgment, ECF Nos. 12 & 15. 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 under Title II and her application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C §§ 401-434, 1381-1383F. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth

1 below, the Court **GRANTS** Defendant’s Motion for Summary Judgment and  
2 **DENIES** Plaintiff’s Motion for Summary Judgment.

3 **I. Jurisdiction**

4 Plaintiff protectively filed her applications for Disability Insurance Benefits  
5 and Supplemental Security Income on August 27, 2014. AR 44, 254-61. Her  
6 amended alleged onset date of disability is March 1, 2013. AR 44, 73-74.  
7 Plaintiff’s applications were initially denied on February 3, 2015, AR 180-89, and  
8 on reconsideration on April 30, 2015, AR 197-203.

9 A hearing with Administrative Law Judge (“ALJ”) Tom L. Morris occurred  
10 on February 1, 2017. AR 58-98. On March 27, 2017, the ALJ issued a decision  
11 finding Plaintiff ineligible for disability benefits. AR 44-52. The Appeals Council  
12 denied Plaintiff’s request for review on March 9, 2018, AR 1-4, making the ALJ’s  
13 ruling the “final decision” of the Commissioner.

14 Plaintiff timely filed the present action challenging the denial of benefits,  
15 on May 8, 2018. ECF No. 3. Accordingly, Plaintiff’s claims are properly before  
16 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. § 1382c(a)(3)(B).

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

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

17 Step two asks whether the claimant has a severe impairment, or combination  
18 of impairments, that significantly limits the claimant’s physical or mental ability to  
19 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe  
20 impairment is one that has lasted or is expected to last for at least twelve months,

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

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

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

17 Step five shifts the burden to the Commissioner to prove that the claimant is  
18 able to perform other work in the national economy, taking into account the  
19 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),  
20 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this

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

### 5 **III. Standard of Review**

6 A district court's review of a final decision of the Commissioner is governed  
7 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the  
8 Commissioner's decision will be disturbed “only if it is not supported by  
9 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,  
10 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than a  
11 mere scintilla but less than a preponderance; it is such relevant evidence as a  
12 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*  
13 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d  
14 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining  
15 whether the Commissioner’s findings are supported by substantial evidence, “a  
16 reviewing court must consider the entire record as a whole and may not affirm  
17 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*  
18 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879  
19 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 47 years old at the amended  
17 alleged date of onset. AR 254, 256. She has an education through the seventh grade  
18 and a certified nursing assistant certificate and she is able to communicate in  
19 English. AR 50, 60, 284. Plaintiff has past work as a certified nursing assistant and  
20 a farm worker. AR 50, 310.

1 **V. The ALJ's Findings**

2 The ALJ determined that Plaintiff was not under a disability within the  
3 meaning of the Act from March 1, 2013, through the date of the ALJ's decision.  
4 AR 44, 51.

5 **At step one**, the ALJ found that Plaintiff had not engaged in substantial  
6 gainful activity since March 1, 2013 (citing 20 C.F.R. §§ 404.1571 *et seq.*, and  
7 416.971 *et seq.*). AR 46.

8 **At step two**, the ALJ found Plaintiff had the following severe impairments:  
9 other and unspecified arthropathies, spine disorders, and obesity (citing 20 C.F.R.  
10 §§ 404.1520(c) and 416.920(c)). AR 46.

11 **At step three**, the ALJ found that Plaintiff did not have an impairment or  
12 combination of impairments that meets or medically equals the severity of one of  
13 the listed impairments in 20 C.F.R. § 404, Subpt. P, App. 1. AR 47.

14 **At step four**, the ALJ found that Plaintiff had the residual functional  
15 capacity to perform light work, with the following exceptions: she can occasionally  
16 climb ramps and stairs, balance, stoop, kneel, crouch, and crawl; she can never  
17 climb ladders, ropes, or scaffolds; reaching with left upper extremity for overhead  
18 and lateral is occasional; she can have frequent left handling; she much avoid  
19 concentrated exposure to hazards (e.g., dangerous machinery, unprotected heights,  
20

1 etc.); and she may be off task about 10% over the course of an eight-hour workday.

2 AR 47.

3 The ALJ found that Plaintiff is unable to perform any past relevant work.

4 AR 50.

5 **At step five**, the ALJ found in light of her age, education, work experience,  
6 and residual functional capacity, there are additional jobs that exist in significant  
7 numbers in the national economy that Plaintiff can perform. AR 51. These include  
8 bakery worker conveyer line, counter clerk, and furniture rental consultant. AR 51.

## 9 **VI. Issues for Review**

10 Plaintiff argues that the Commissioner's decision is not free of legal error  
11 and not supported by substantial evidence. Specifically, she argues the ALJ erred  
12 by: (1) improperly discrediting Plaintiff's subjective complaint testimony; (2)  
13 improperly evaluating the opinion evidence; (3) improperly assessing whether  
14 Plaintiff's functioning met or equaled listing 1.02 at step three; and (4) failing to  
15 identify specific jobs, available in significant numbers, which Plaintiff could  
16 perform despite her limitations.

## 17 **VII. Discussion**

### 18 **A. The ALJ properly evaluated Plaintiff's subjective complaints.**

19 An ALJ engages in a two-step analysis to determine whether a claimant's  
20 testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533



1 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective  
2 medical evidence of an underlying impairment or impairments that could  
3 reasonably be expected to produce some degree of the symptoms alleged. *Id.*  
4 Second, if the claimant meets this threshold, and there is no affirmative evidence  
5 suggesting malingering, “the ALJ can reject the claimant’s testimony about the  
6 severity of [her] symptoms only by offering specific, clear, and convincing reasons  
7 for doing so.” *Id.*

8 In weighing a claimant's credibility, the ALJ may consider many factors,  
9 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's  
10 reputation for lying, prior inconsistent statements concerning the symptoms, and  
11 other testimony by the claimant that appears less than candid; (2) unexplained or  
12 inadequately explained failure to seek treatment or to follow a prescribed course of  
13 treatment; and (3) the claimant's daily activities.” *Smolen*, 80 F.3d at 1284. When  
14 evidence reasonably supports either confirming or reversing the ALJ's decision, the  
15 Court may not substitute its judgment for that of the ALJ. *Tackett v. Apfel*, 180  
16 F.3d 1094, 1098 (9th Cir.1999). Here, the ALJ found that the medically  
17 determinable impairments could reasonably be expected to produce the symptoms  
18 Plaintiff alleges; however, the ALJ determined that Plaintiff’s statements of  
19 intensity, persistence, and limiting effects of the symptoms were not entirely

1 credible. AR 48. The ALJ provided multiple clear and convincing reasons for  
2 discrediting Plaintiff's subjective complaint testimony. AR 47-49.

3 First, the ALJ noted multiple inconsistencies with the medical evidence. AR  
4 129-40. This determination is supported by substantial evidence in the record. An  
5 ALJ may discount a claimant's subjective symptom testimony that is contradicted  
6 by medical evidence. *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155,  
7 1161 (9th Cir. 2008). Inconsistency between a claimant's allegations and relevant  
8 medical evidence is a legally sufficient reason to reject a claimant's subjective  
9 testimony. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). The ALJ  
10 also detailed improvement of her impairments with treatment, which is supported.  
11 *Smolen*, 80 F.3d at 1284.

12 Plaintiff alleges completely debilitating physical limitations. However, the  
13 record does not support the level of physical difficulties alleged. The record is  
14 replete with consistently unremarkable or only mild imaging and examinations,  
15 including: only mild spondylosis with no acute bony injury; full normal range of  
16 motion in her back; full lumbar stability and strength; normal strength; and benign  
17 conditions that are all inconsistent with her allegations of total disability. *See* AR  
18 354-55, 410, 414, 418, 448, 450-51, 473-74, 479, 522, 526, 529, 538, 546, 565,  
19 578. The ALJ further noted, that despite Plaintiff's allegations of severe limitations  
20 in her ability to sit and stand, there is almost no evidence of these complaints in the

1 record. AR 49. A claimant’s failure to report symptoms or limitations to treatment  
2 providers is a legitimate consideration in determining the credibility of her  
3 complaints. *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006). Additionally,  
4 the ALJ noted that Plaintiff’s impairments have been improving. AR 49.

5 Additionally, the records show that Plaintiff’s knee injury significantly improved  
6 in October and November 2016. AR 577, 580. The most recent treatment notes in  
7 the record show that by mid December 2016, Plaintiff reported “not having much  
8 pain” in her knees, and on physical examination she had only mild left knee pain  
9 and in her right knee she had no tenderness or effusion. AR 582. Plaintiff’s doctor  
10 stated that her knee exam was “benign”, and he encouraged her to exercise. AR  
11 583. The record supports the ALJ’s determination that Plaintiff’s conditions are not  
12 as limiting as she alleges.

13 Next, the ALJ found that Plaintiff’s allegations of completely disabling  
14 limitations are belied by her actual level of activity. AR 48-49. Despite allegations  
15 of completely debilitating shoulder pain and a need to stay in bed at least four  
16 times a week due to pain, she was still able to do normal work that included  
17 reaching overhead and walk and exercise daily. AR 48, 76, 81, 88-89, 323, 549.  
18 Activities inconsistent with the alleged symptoms are proper grounds for  
19 questioning the credibility of an individual’s subjective allegations. *Molina*, 674  
20 F.3d at 1113 (“[e]ven where those activities suggest some difficulty functioning,

1 they may be grounds for discrediting the claimant’s testimony to the extent that  
2 they contradict claims of a totally debilitating impairment”); *see also Rollins v.*  
3 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ reasonably found that  
4 Plaintiff’s actual level of activity contradict her allegations of total disability. This  
5 determination is supported by the record.

6 When the ALJ presents a reasonable interpretation that is supported by the  
7 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d at 857.  
8 The Court “must uphold the ALJ’s findings if they are supported by inferences  
9 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*  
10 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one  
11 rational interpretation, one of which supports the ALJ’s decision, the conclusion  
12 must be upheld”). The Court does not find the ALJ erred when discounting  
13 Plaintiff’s credibility because the ALJ properly provided multiple clear and  
14 convincing reasons for doing so.

15 **B. The ALJ Properly Weighed the Opinion Evidence.**

16 **a. Legal Standard.**

17 The Ninth Circuit has distinguished between three classes of medical  
18 providers in defining the weight to be given to their opinions: (1) treating  
19 providers, those who actually treat the claimant; (2) examining providers, those  
20 who examine but do not treat the claimant; and (3) non-examining providers, those

1 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th  
2 Cir. 1996) (as amended).

3 A treating provider's opinion is given the most weight, followed by an  
4 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the  
5 absence of a contrary opinion, a treating or examining provider's opinion may not  
6 be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a  
7 treating or examining provider's opinion is contradicted, it may only be discounted  
8 for "specific and legitimate reasons that are supported by substantial evidence in  
9 the record." *Id.* at 830-31.

10 The ALJ may meet the specific and legitimate standard by "setting out a  
11 detailed and thorough summary of the facts and conflicting clinical evidence,  
12 stating his interpretation thereof, and making findings." *Magallanes v. Bowen*, 881  
13 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating  
14 provider's opinion on a psychological impairment, the ALJ must offer more than  
15 his or his own conclusions and explain why he or she, as opposed to the provider,  
16 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

17 Additionally, "other sources" for opinions include nurse practitioners,  
18 physicians' assistants, therapists, teachers, social workers, spouses, and other non-  
19 medical sources. 20 C.F.R. §§ 404.1513(d), 416.913(d). An ALJ is required to  
20 "consider observations by non-medical sources as to how an impairment affects a

1 claimant's ability to work.” *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir.1987).  
2 Non-medical testimony can never establish a diagnosis or disability absent  
3 corroborating competent medical evidence. *Nguyen v. Chater*, 100 F.3d 1462, 1467  
4 (9th Cir.1996). An ALJ is obligated to give reasons germane to “other source”  
5 testimony before discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir.1993).

6 **b. Dr. Mary Pelicer, M.D., and Dr. Norman Staley, M.D.**

7 Dr. Pelicer is a doctor who examined Plaintiff in October 2014. AR 390-95.  
8 Dr. Pelicer opined that Plaintiff would be limited to sedentary work with postural  
9 and manipulative limitations. *Id.* Dr. Staley is a non-examining doctor who  
10 provided an opinion in October 2014 that similarly limited Plaintiff to sedentary  
11 work with additional limitations. AR 104-06, 114-16. These two opinions are  
12 contradicted by Dr. Staley’s January 2015 opinion and the April 2015 opinion of  
13 Dr. Alnoor Virji, both of which were afforded great weight and are consistent with  
14 Plaintiff’s assessed residual functional capacity. AR 49, 126-28, 137-39, 161-63,  
15 172-74.

16 The ALJ did not completely reject Dr. Pelicer’s opinion or Dr. Staley’s 2014  
17 opinion, but assigned both little weight. AR 49. The ALJ provided multiple reasons  
18 supported by the record for discounting Dr. Gomes’ opinion. AR 49-50. The ALJ  
19 found that these two opinions are inconsistent with the overall medical record,  
20 including the two most recent medical opinions, the medical exams and imaging,

1 and the significant evidence demonstrating that Plaintiff's impairments are  
2 improving. *Id.* An ALJ may reject a doctor's opinion when it is inconsistent with  
3 other evidence in the record. *See Morgan v. Comm'r of the Soc. Sec. Admin.*, 169  
4 F.3d 595, 600 (9th Cir. 1999). An ALJ may properly reject an opinion that  
5 provides restrictions that appear inconsistent with the claimant's level of activity.  
6 *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001). The opinioned severe  
7 limitations in these two 2014 opinions are inconsistent with the overall record  
8 consistently demonstrating unremarkable or only mild imaging and examinations,  
9 including: only mild spondylosis with no acute bony injury; full normal range of  
10 motion in her back; full lumbar stability and strength; normal strength; benign  
11 conditions; no significant shoulder impairment findings in 2015 and 2016; only  
12 mild degenerative changes in her left knee and normal right knee findings in 2016;  
13 minimal osteoarthritis; and normal range of motion in her upper and lower  
14 extremities. *See AR 354-55, 410, 414, 418, 448, 450-51, 472-74, 477, 479, 522,*  
15 *526, 529, 538, 546, 565, 578.* Additionally, as previously noted, Plaintiff's  
16 impairments have been improving, and by mid December 2016, Plaintiff reported  
17 "not having much pain" in her knees, on physical examination she had only mild  
18 left knee pain and in her right knee she had no tenderness or effusion, and  
19 Plaintiff's doctor stated that her knee exam was "benign" and he encouraged her to  
20 exercise. AR 49, 582- 83.

1           When the ALJ presents a reasonable interpretation that is supported by the  
2 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
3 857. The Court “must uphold the ALJ's findings if they are supported by inferences  
4 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*  
5 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one  
6 rational interpretation, one of which supports the ALJ’s decision, the conclusion  
7 must be upheld”). Thus, the Court finds the ALJ did not err in his consideration of  
8 the medical opinion evidence.

9           **c. Violetta Mendoa**

10           Violetta Mendoa is Plaintiff’s daughter who filled out a third-party function  
11 report in September 2014. AR 302-09. Ms. Mendoa provided statements similar to  
12 Plaintiff’s limitations allegations. *Id.* The opinion of Ms. Mendoa falls under the  
13 category of “other sources,” and the ALJ must give germane reasons for  
14 discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir.1993).

15           The ALJ afforded little weight to Ms. Mendoa’s statements for multiple  
16 valid reasons. AR 50. The ALJ notes that Ms. Mendoa’s statements mirror those  
17 of the Plaintiff and states that Ms. Mendoa’s report is given little weight for the  
18 same reasons Plaintiff was not found entirely credible. AR 50. *See Valentine v.*  
19 *Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009) (upholding the ALJ’s  
20 rejection of a lay witness for the same reasons the ALJ rejected the claimant’s



1 credibility); *See also Molina*, 674 F.3d at 1117. Additionally, the ALJ found that  
2 these statements are not consistent with the medical evidence that demonstrates  
3 only mild or benign limitations. An ALJ may reject even a doctor’s opinion when  
4 it is inconsistent with other evidence in the record. *See Morgan*, 169 F.3d at 600.

5 When the ALJ presents a reasonable interpretation that is supported by the  
6 evidence, it is not the role of the courts to second-guess it. *Rollins*, 261 F.3d 853,  
7 857. The Court “must uphold the ALJ’s findings if they are supported by inferences  
8 reasonably drawn from the record.” *Molina*, 674 F.3d 1104, 1111; *see also*  
9 *Thomas*, 278 F.3d 947, 954 (if the “evidence is susceptible to more than one  
10 rational interpretation, one of which supports the ALJ’s decision, the conclusion  
11 must be upheld”). Thus, the Court finds the ALJ did not err in his consideration of  
12 Ms. Mendoal’s opinion.

13 **C. The ALJ Did Not Err in Finding That Plaintiff’s Functioning Did Not**  
14 **Meet Listing 1.02.**

15 **a. Legal Standard.**

16 Plaintiff argues that she presumptively is disabled at step three because she  
17 meets or exceeds the criteria of Listing 1.02.

18 A claimant is disabled under Listing 1.02 with major joint dysfunction  
19 characterized by gross anatomical deformity and chronic joint pain and stiffness  
20 with signs of limitations of motion or abnormal motion in the affected joints, and

1 findings on appropriate medically acceptable imaging of joint space narrowing,  
2 bony destruction, or ankylosis of the affected joints. With: A.) one major  
3 peripheral weight-bearing joint resulting in inability to ambulate effectively, or B.)  
4 involvement of one major peripheral joint in each upper extremity resulting in an  
5 inability to perform fine and gross movements effectively.

6 The ALJ considered whether Plaintiff's impairments, singly or in  
7 combination, met or medically equaled the criteria of any listed impairment under  
8 20 C.F.R. Part 404, Subpart P, app. 1 (the "Listings"), and specifically found that  
9 Plaintiff's impairments did not meet or equal the criteria under Listing 1.02. AR  
10 47. Throughout the ALJ's decision the ALJ notes that the objective examinations  
11 and imaging demonstrate only very minimal findings including only mild joint  
12 degeneration and no abnormalities. AR 47-50.

13 Importantly, the claimant has the burden to present evidence establishing  
14 that her impairments meet or equal listed impairments. *Oviatt v. Com'r of Soc. Sec.*  
15 *Admin.*, 303 F. App'x 519, 523 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d 1071,  
16 1074-75 (9th Cir.2007); *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir.2005). To  
17 meet a listed impairment, a disability claimant must establish that his condition  
18 satisfies each element of the listed impairment in question. *See Sullivan v. Zebley*,  
19 493 U.S. 521, 530 (1990); *Tackett v. Apfel*, 180 F.3d 1094, 1099 (9th Cir.1999). To  
20 equal a listed impairment, a claimant must establish symptoms, signs, and

1 laboratory findings at least equal in severity and duration to each element of the  
2 most similar listed impairment. *Tackett*, 180 F.3d at 1099-1100 (quoting 20 C.F.R.  
3 404.1526).

4 Plaintiff essentially contends that she has some evidence of mild or minute  
5 limited joint movement and pain and that she is obese and as such this should  
6 result in her impairments meeting Listing 1.02. However, Plaintiff has failed to  
7 demonstrate that she meets even the interlocutory requirements of major  
8 dysfunction of joints characterized by anatomical deformity. The record is replete  
9 with support for the ALJ's decision with objective imaging demonstrating very  
10 mild joint degeneration and no abnormality, and Plaintiff is unable to point to any  
11 medically acceptable evidence to establish the very high bar of meeting or equaling  
12 a listed impairment.

13 Ultimately, substantial evidence supports the ALJ's finding that her  
14 impairments did not meet Listing 1.02. When the ALJ presents a reasonable  
15 interpretation that is supported by the evidence, it is not the role of the courts to  
16 second-guess it. *Rollins*, 261 F.3d at 857. The Court "must uphold the ALJ's  
17 findings if they are supported by inferences reasonably drawn from the record."  
18 *Molina*, 674 F.3d 1104, 1111; *see also Thomas*, 278 F.3d 947, 954 (if the  
19 "evidence is susceptible to more than one rational interpretation, one of which  
20 supports the ALJ's decision, the conclusion must be upheld"). The Court's review

1 of the record confirms that the ALJ's determination that Plaintiff's impairment  
2 does not fall within the scope of Listing 1.02 is supported by substantial evidence.  
3 As such, the Court concludes that a finding in Plaintiff's favor is not warranted.

4 **D. The ALJ did not err at step five of the sequential evaluation process.**

5 Plaintiff argues that the ALJ erred the step five finding by failing to identify  
6 specific jobs that exist in substantial numbers in the national economy that Plaintiff  
7 can perform despite her functional limitations. The Court disagrees. The ALJ  
8 specifically stated that all symptoms consistent with the medical evidence were  
9 considered in assessing Plaintiff's residual functional capacity. AR 361, 362, 364.  
10 Additionally, the ALJ need not specifically include limitations in the hypothetical  
11 if they are adequately accounted for in the residual functional capacity. *See Stubbs-*  
12 *Danielson*, 539 F.3d 1169, 1173-76 (9th Cir. 2008). The Court will uphold the  
13 ALJ's findings when a claimant attempts to restate the argument that the residual  
14 functional capacity finding did not account for all limitations. *Id.* at 1175-76.

15 The ALJ properly framed the hypothetical question addressed to the  
16 vocational expert. Additionally, the vocational expert identified jobs in the national  
17 economy that exist in significant numbers that match Plaintiff's abilities. Thus, the  
18 Court finds the ALJ did not err in and the ALJ properly identified jobs that exist in  
19 substantial numbers in the national economy that Plaintiff could perform despite  
20 her limitations.

1 **VIII. Conclusion**

2 Having reviewed the record and the ALJ’s findings, the Court finds the  
3 ALJ’s decision is supported by substantial evidence and is free from legal error.

4 Accordingly, **IT IS ORDERED:**

5 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

6 2. Defendant’s Motion for Summary Judgment, **ECF No. 15**, is  
7 **GRANTED**.

8 3. Judgment shall be entered in favor of Defendant and the file shall be  
9 **CLOSED**.

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

12 **DATED** this 27th day of December, 2018.

13 *s/Robert H. Whaley*  
14 **ROBERT H. WHALEY**  
Senior United States District Judge