



1 I.

2 **DISPUTED ISSUES**

3 As reflected in the Joint Stipulation, the disputed issues which Plaintiff  
4 raises as the grounds for reversal and/or remand are as follows:

- 5 1. Whether the ALJ properly determined that Plaintiff had no severe  
6 mental impairment; and  
7 2. Whether the ALJ properly restated and weighed the physical  
8 function opinions of treating physicians Eilat, Nathan, and Salick.

9 (JS at 19.)

10 II.

11 **STANDARD OF REVIEW**

12 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision  
13 to determine whether the Commissioner’s findings are supported by substantial  
14 evidence and whether the proper legal standards were applied. DeLorme v.  
15 Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more  
16 than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402  
17 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of  
18 Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial  
19 evidence is “such relevant evidence as a reasonable mind might accept as adequate  
20 to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The  
21 Court must review the record as a whole and consider adverse as well as  
22 supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).  
23 Where evidence is susceptible of more than one rational interpretation, the  
24 Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452  
25 (9th Cir. 1984).

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1 **III.**

2 **DISCUSSION**

3 **A. The ALJ Properly Determined That Plaintiff Had No Severe Mental**  
4 **Impairment.**

5 Plaintiff contends that the extensive evidence of mental disability presented  
6 was too significant for the ALJ to dismiss and that the stated reasons for  
7 determining she had no severe mental impairment were legally insufficient. (JS at  
8 20.) This Court disagrees.

9 **1. Substantial Evidence Supports the ALJ’s Determination.**

10 Title 20 C.F.R. § 404.1521 defines a “non-severe impairment” as one which  
11 does not significantly – i.e., more than minimally – limit one’s physical or mental  
12 capacity to perform basic work-related functions. See Bowen v. Yuckert, 482 U.S.  
13 137, 154, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987). Examples of such functions  
14 would be the ability to sit, stand, walk, lift, carry, push, pull, reach, or handle; see,  
15 hear, and speak; understand, remember, and carry out simple instructions; use  
16 judgment; respond appropriately to supervisors, co-workers, and usual work  
17 situations; and deal with changes in a work setting. 20 C.F.R. § 404.1521. This  
18 analysis is ““a de minimis screening device to dispose of groundless claims.””  
19 Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996) (citing Yuckert, 482 U.S. at  
20 153-54)). A finding of a non-severe impairment is appropriate only when the  
21 “medical evidence establishes only a slight abnormality or a combination of slight  
22 abnormalities which would have no more than a minimal effect on an individual’s  
23 ability to work . . . “ Social Security Ruling (“SSR”) 85-28; see also Yuckert, 482  
24 U.S. at 154 n.12. This assessment, therefore, is independent of considerations of  
25 age, education, and vocational background. Yuckert, 482 U.S. at 151-54; Corrao  
26 v. Shalala, 20 F.3d 943, 949 (9th Cir. 1994).

27 Here, there is substantial evidence to support the ALJ’s finding of no severe  
28 mental impairment. (AR at 25.) As noted by the ALJ, psychiatrist Katalin Bassett,

1 M.D., psychologist Robert Stephen Smith, Ph.D., and state agency physician,  
2 Robert T. Ferrell, M.D., all concluded that Plaintiff had no more than mild to slight  
3 mental functional limitations. (JS at 23-24; AR at 25, 467-80, 498-538.) In his  
4 December 2004 review of the medical evidence, Dr. Ferrell noted Plaintiff only  
5 had mild limitations in i) restriction of activities of daily living, ii) maintaining  
6 social functioning, and iii) maintaining concentration, persistence, or pace. (AR at  
7 467-80.) In addition, Dr. Ferrell noted the impairments were not expected to last  
8 more than twelve months. (*Id.*) Similarly, in January 2005, Dr. Smith concluded  
9 there were “no consistent indications that [Plaintiff’s] cognitive abilities are  
10 affected by emotional distress.” (*Id.* at 538.)

11 Dr. Bassett’s and Dr. Smith’s June 6, 2005 independent psychiatric medical  
12 examination of Plaintiff similarly concluded that she only has a minimal to slight  
13 Permanent Psychiatric Disability (“PPD”). (*Id.* at 516-17.) Dr. Bassett  
14 emphasized that Plaintiff “does not have any psychiatric disability that would  
15 preclude her from working as a drug counselor.” (*Id.*) In their report, it is noted  
16 that even the evaluation of slight PPD was partially a result of Plaintiff  
17 exaggerating responses on her MMPI-2 and MCMI-III examinations. (*Id.*)  
18 Regarding Plaintiff’s claims of emotional distress, the report notes the following:

19 Her claim that from this one incident of October 19, 2003 she  
20 totally fell apart, both physically and emotionally, and could never go  
21 back to work as a drug counselor is clearly nonsense . . . .

22 She is probably very angry with her employer because they placed  
23 her in a position she did not want to do, when she returned to work after  
24 her shoulder surgery. Still, her claim that she cannot do her job as a drug  
25 rehab counselor is not based upon realistic psychological symptoms, but  
26 is simply a manipulative effort on her part to get out of a job assignment  
27 she did not want to do. She did not want to do the same job in 2002 and  
28 ended up on a year of disability because they were going to transfer her,

1 and she claimed a psychiatric injury at the time. I do not believe much  
2 changed other than she claims what sounds like an extreme amount of  
3 physical and emotion reaction to a relatively mild injury of October 19,  
4 2003.

5 She is now applying for Social Security disability, which is a  
6 rather bad prognostic sign. She clearly does not have a whole lot of  
7 motivation to return to work, in spite of her statement to the contrary.

8 (Id. at 514 (emphasis added).)

9 The ALJ properly gave weight to these opinions. The findings of all three  
10 medical experts are consistent with and provide substantial evidence to support the  
11 ALJ's determination of no severe mental impairment. Thus, there was no error.

12 **2. The ALJ Properly Discounted Findings of Severe Mental**  
13 **Impairment.**

14 It is well-established in the Ninth Circuit that a treating physician's opinions  
15 are entitled to special weight, because a treating physician is employed to cure and  
16 has a greater opportunity to know and observe the patient as an individual.  
17 McAllister v. Sullivan, 880 F.2d 1086, 1089 (9th Cir. 1989). "The treating  
18 physician's opinion is not, however, necessarily conclusive as to either a physical  
19 condition or the ultimate issue of disability." Magallanes v. Bowen, 881 F.2d 747,  
20 751 (9th Cir. 1989) (citing Rodriguez v. Bowen, 876 F.2d 759, 761-62 & n.7 (9th  
21 Cir. 1989)). The weight given a treating physician's opinion depends on whether it  
22 is supported by sufficient medical data and is consistent with other evidence in the  
23 record. See 20 C.F.R. § 404.1527(d)(2). If the treating physician's opinion is  
24 uncontroverted by another doctor, it may be rejected only for "clear and  
25 convincing" reasons. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995); Baxter v.  
26 Sullivan, 923 F.2d 1391, 1396 (9th Cir. 1991). If the treating physician's opinion  
27 is controverted, it may be rejected only if the ALJ makes findings setting forth  
28 specific and legitimate reasons that are based on the substantial evidence of record.

1 Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); Magallanes, 881 F.2d at  
2 751; Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987). The same standards  
3 apply to examining physicians. See, e.g., Lester, 81 F.3d at 830-31.

4       However, the Ninth Circuit also has held that “[t]he ALJ need not accept the  
5 opinion of any physician, including a treating physician, if that opinion is brief,  
6 conclusory, and inadequately supported by clinical findings.” Thomas, 278 F.3d at  
7 957; see also Matney v. Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992). A treating  
8 or examining physician’s opinion based on the plaintiff’s own complaints may be  
9 disregarded if the plaintiff’s complaints have been properly discounted. Morgan v.  
10 Comm’r of Soc. Sec. Admin., 169 F.3d 595, 602 (9th Cir. 1999); see also  
11 Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir. 1997); Andrews v. Shalala, 53  
12 F.3d 1035, 1043 (9th Cir. 1995). Additionally, “[w]here the opinion of the  
13 claimant’s treating physician is contradicted, and the opinion of a nontreating  
14 source is based on independent clinical findings that differ from those of the  
15 treating physician, the opinion of the nontreating source may itself be substantial  
16 evidence; it is then solely the province of the ALJ to resolve the conflict.”  
17 Andrews, 53 F.3d at 1041; Magallanes, 881 F.2d at 751; Miller v. Heckler, 770  
18 F.2d 845, 849 (9th Cir. 1985).

19       Here, even though Plaintiff attempts to discredit the ALJ’s findings by  
20 pointing to the opinion of treating physician, Thomas Curtis, M.D., the ALJ  
21 demonstrated Dr. Curtis’ opinion to be controverted and provided specific and  
22 legitimate reasons for rejecting the results of his examination. (JS at 20, 24-27.)

23       Plaintiff contends that Dr. Curtis’ finding of moderate to moderate-to-severe  
24 Permanent Emotional Impairment was consistent with other opinions presented.  
25 (Id. at 21.) However, it is clear from the record that Plaintiff’s assertion that Dr.  
26 Curtis’ findings was “wholly consistent” with Dr. Basset is simply not an accurate  
27 representation of the findings. (Id.) As Plaintiff has admitted, Dr. Curtis endorsed  
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1 far greater limitations than Dr. Basset. (Id.) In fact, Dr. Basset commented on the  
2 poor quality of Dr. Curtis’ written conclusion, adding that although Plaintiff may  
3 have a significant amount of disability, she doubted that it would be in the range of  
4 moderate as asserted by Dr. Curtis. (AR at 535.) Furthermore, in Dr. Basset’s  
5 Medical Record Review, she went as far as to characterize Dr. Curtis’ findings of  
6 moderate disability in work functions as nonsensical. (Id. at 534.) Here, Dr.  
7 Basset’s examination findings constitute substantial evidence since it was based on  
8 independent clinical findings, and any conflict between these findings and Dr.  
9 Curtis’ opinion is for the ALJ to resolve. See Andrews, 53 F.3d at 1041 (opinion  
10 of a nontreating source based on independent clinical findings may itself be  
11 substantial evidence).

12 Moreover, the ALJ provided specific and legitimate reasons to reject Dr.  
13 Curtis’ findings. The ALJ noted Dr. Curtis’ treatment notes were brief and  
14 consisted mostly of statements of Plaintiff’s subjective complaints<sup>3</sup> and medication  
15 refill records, rather than “repeated mental status examinations or individualized  
16 therapy.” (AR at 24-25, 685-88, 888-89, 890); see also Thomas, 278 F.3d at 957  
17 (an ALJ is not required to accept the opinion of any physician, if that opinion is  
18 brief, conclusory, or inadequately supported by clinical findings); Matney, 981  
19 F.2d 1016, 1019 (9th Cir. 1992.) Plaintiff points to two mental status examinations  
20 completed by Dr. Curtis as evidence of extensive testing or treatment and suggests  
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22 <sup>3</sup> Plaintiff is not challenging the ALJ’s finding of Plaintiff’s lack of  
23 credibility. The ALJ gave clear and convincing reasons to discredit Plaintiff’s  
24 subjective complaints. See Cotton v. Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986);  
25 see also Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala,  
26 12 F.3d 915, 918 (9th Cir. 1993); Bunnell v. Sullivan, 947 F.2d 341, 343 (9th Cir.  
27 1991). Specifically, the ALJ found key inconsistencies between Plaintiff’s  
28 allegations and her daily activities such as doing personal care, shopping, doing the  
laundry and chores, driving and riding in a car, using the phone and computer  
daily, and attending college with good grades. (AR at 25-26.)

1 the ALJ had the duty to make inquiries for missing information. (JS at 22.)  
2 However, as the ALJ reasoned, Dr. Curtis contradicted his own diagnosis, as he  
3 never prescribed more aggressive treatment, including hospitalization, day  
4 treatment programs, group therapy, individual therapy, or even referred Plaintiff to  
5 another doctor. (AR at 25; JS at 26.)

6 Plaintiff also contends the ALJ failed to recognize the existence of any  
7 mental incapacity and suggests that not every mental condition would be “so  
8 incapacitating as to necessitate inpatient hospitalization.” (JS at 21, 23). The first  
9 part of this contention is false and unduly suggestive since it is clear the ALJ  
10 determined the Plaintiff was free only from any severe mental impairment and not  
11 all mental impairment. (AR at 25.) The ALJ, in fact, recognized i) mild  
12 restrictions of activities of daily living; ii) mild difficulties in maintaining social  
13 functioning; iii) mild difficulties in maintaining concentration, persistence, or pace;  
14 and iv) no repeated episodes of extended-duration decompensation. (Id.)  
15 Moreover, Plaintiff’s suggestion that not every mental condition requires  
16 hospitalization does nothing to advance her argument, but instead simply restates  
17 the obvious. Here, the evidence of a lack of more aggressive treatment when  
18 viewed in combination with other consistent medical findings supports the ALJ’s  
19 conclusion that Plaintiff does not suffer from a severe mental impairment. Thus,  
20 there was no error.

21 **B. The ALJ Properly Restated and Weighed the Physical Function**  
22 **Opinions of Treating Physicians Eliat, Nathan, and Salick.**

23 Plaintiff contends the ALJ did not properly restate and weigh the impairment  
24 opinions of treating physicians Paz Eliat, M.D., Ross Nathan, M.D., and Allen  
25 Salick, M.D. (JS at 27-31.) Specifically, Plaintiff argues the ALJ did not consider  
26 Dr. Eliat’s October 2003 through January 2004 findings and mischaracterizes Dr.  
27 Nathan’s opinion as being consistent with the ALJ’s findings. (Id.) In addition,  
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1 Plaintiff alleges the ALJ committed error when he refused to credit Dr. Salick's  
2 opinions. (Id.)

3 As noted above, a treating physician's opinions are entitled to special  
4 weight, but are not necessarily conclusive. McAllister, 880 F.2d at 1089;  
5 Magallanes, 881 F.2d at 751. These opinions, if controverted, may be rejected  
6 with findings that set forth specific and legitimate reasons based on substantial  
7 evidence of record. Thomas, 278 F.3d at 957; Magallanes, 881 F.2d at 751;  
8 Winans, 853 F.2d at 647. These same standards apply equally to determinations of  
9 physical disability as they do to findings of mental disability.

10 Here, the ALJ properly disregarded the October and November 2003  
11 examination findings of Dr. Eliat as well as the results of his January 2004  
12 examination. Throughout these examinations, Dr. Eliat maintained that Plaintiff be  
13 assigned to modified work duties restricting the use of her right arm and imposing  
14 the need to wear a wrist brace. (AR at 340, 359, 371.) Plaintiff contends these  
15 findings should have been considered. (JS at 29.) However, the ALJ is not  
16 required to "discuss every piece of evidence" so long as the decision was supported  
17 by substantial evidence. Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012  
18 (9th Cir. 2003). Rather, the ALJ need only explain why "significant probative  
19 evidence has been rejected." Vincent ex rel. Vincent v. Heckler, 739 F.2d 1393  
20 (9th Cir. 1984). As explained by the ALJ, Plaintiff had subsequent surgery on her  
21 right hand for carpal tunnel syndrome in March of 2004 resulting in a full  
22 discharge of Plaintiff to return to work with no restrictions as of April 26, 2006.  
23 (AR at 23, 307.) Here, since the subsequent surgery completely remedied the prior  
24 impairment, Dr. Eliat's findings became immaterial to the analysis. Therefore, the  
25 ALJ was not in error in omitting discussion of Dr. Eliat's opinion.

26 Similarly, Plaintiff's contention that the ALJ mischaracterized the degree of  
27 consistency between his determination and Dr. Nathan's opinion is without merit.  
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1 (JS at 28-29.) Plaintiff suggests the ALJ's determination was not as limiting to  
2 Plaintiff's physical movements as Dr. Nathan had suggested. (Id.) Plaintiff asserts  
3 the ALJ only limited Plaintiff to "'frequent' - but not 'constant' - reaching,  
4 handling, fingering, and feeling," whereas Dr. Nathan's December 2003 opinion  
5 restricted Plaintiff from any heavy/repetitive gripping, grasping, lifting, or  
6 squeezing with the right hand. (Id.; AR at 358.) This assertion, however, is  
7 without merit as Plaintiff was discharged from surgery with no restrictions in April  
8 2006 by Dr. Nathan himself, as noted above. (AR at 307.) Therefore, the ALJ's  
9 assertion of consistency was accurate and not a mischaracterization of the medical  
10 evidence. (Id. at 24.)

11 Plaintiff also argues the ALJ failed to give proper weight to the opinion of  
12 treating physician Dr. Salick. (JS at 29.) Dr. Salick opined that Plaintiff was  
13 diagnosed with fibromyalgia and could never stand, walk, or sit, for even one hour.  
14 (AR at 663, 668.) Based on his August 2005 exam, Dr. Salick further found  
15 Plaintiff to be totally impaired. (Id. at 663-64.)

16 In this case, the medical opinions of both medical expert, R. Halpern, M.D.,  
17 and examining physician, Warren David Yu, M.D., contradicted Dr. Salick's  
18 opinion. (Id. at 483-86, 487-95.) In his independent clinical examination, Dr. Yu  
19 found the following:

20  
21 Based on today's examination, the patient should be able to walk  
22 without an assistive device. She should be able to sit for up to six hours  
23 in an eight-hour day. She should be able to stand or walk for up to two  
24 hours in an eight-hour day. She should occasionally be allowed to pick  
25 up 20 pounds, and frequently 10 pounds. She should have only frequent  
26 use of the upper extremities for pushing, pulling, fine finger motor  
27 movements and handling. She should be limited to only occasional  
28 squatting, stooping, kneeling, crawling, climbing, bending or lifting.

1 (Id. at 486 (emphasis added).) Similarly, Dr. Halpern’s February 2005 medical  
2 assessment of Plaintiff’s residual functional capacity matched that of Dr. Yu. (Id.  
3 at 487-97.)

4 Here, both Dr. Yu and Dr. Halpern’s findings contradicted Dr. Salick’s  
5 opinion that Plaintiff could never stand, walk, or sit for even one hour. These  
6 contradictory findings, which include Dr. Yu’s independent clinical evaluation,  
7 constitute substantial evidence, based on which the ALJ could properly reject Dr.  
8 Salick’s opinion. See Andrews, 53 F.3d at 1041.

9 Plaintiff also contends that the ALJ was incorrect to suggest there were  
10 inconsistencies between Dr. Salick’s recommendation of physical exercise and his  
11 diagnosis of physical impairment.<sup>4</sup> (JS at 30.) However, the ALJ did not rely  
12 solely on the perception of inconsistencies between Dr. Salick’s recommendation  
13 and diagnosis to reject those findings. Instead, Dr. Salick’s findings were  
14 specifically contradicted by other examining physicians such as Dr. Yu and Dr.  
15 Halpern. (AR at 483-86, 487-95.) These other findings constituted specific and  
16 legitimate reasons for the ALJ’s rejection, and, therefore, any error was harmless.  
17 Curry v. Sullivan, 925 F.2d 1127, 1131 (9th Cir. 1991) (harmless error rule applies  
18 to review of administrative decisions regarding liability).

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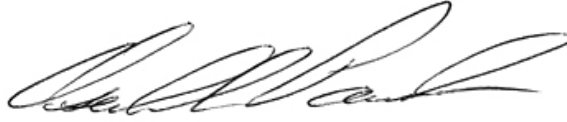
23  
24 **IV.**

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27 <sup>4</sup> Plaintiff was diagnosed with fibromyalgia and cites the Fibromyalgia  
28 Pamphlet from the American College of Rheumatology as stating that “regular  
exercise is one of the most effective treatments for fibromyalgia.” (JS at 30-31.)

**ORDER**

IT THEREFORE IS ORDERED that Judgment be entered affirming the decision of the Commissioner, and dismissing this action with prejudice.

Dated: August 24, 2009



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HONORABLE OSWALD PARADA  
United States Magistrate Judge

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