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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JANET PAEZ,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. CV 16-09148-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Janet Paez (“Plaintiff”) challenges the Commissioner’s denial of her application for a period of disability, disability insurance benefits (“DIB”), and supplemental security income (“SSI”). For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED.

II. PROCEEDINGS BELOW

On July 5, 2011, Plaintiff protectively applied for SSI alleging disability beginning August 24, 2008. (Administrative Record (“AR”) 127, 140, 179-80.) Her application was denied initially on November 29, 2011, and upon reconsideration on May 22, 2012. (AR 207, 215.) On June 23, 2012, Plaintiff filed

1 a written request for hearing, and a hearing was held on April 15, 2013. (AR 40,
2 221.) Represented by counsel, Plaintiff appeared and testified, along with an
3 impartial vocational expert (“VE”). (AR 40-74.) On May 3, 2013, the
4 Administrative Law Judge (“ALJ”) found that Plaintiff had not been under a
5 disability, pursuant to the Social Security Act,¹ since August 24, 2008. (AR 195.)
6 The Appeals Council remanded the case for further consideration, and another
7 hearing was held on March 23, 2015. (AR 75, 201-05.) Plaintiff again appeared
8 and testified, along with her mother and an impartial VE. (AR 75-126.) On May
9 22, 2015, the ALJ again found that Plaintiff had not been under a disability,
10 pursuant to the Social Security Act, from August 24, 2008 through the date of
11 decision. (AR 32.) Plaintiff filed this action on December 9, 2016. (Dkt. No. 1.)

12 The ALJ followed a five-step sequential evaluation process to assess whether
13 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
14 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
15 in substantial gainful activity since August 24, 2008, the alleged onset date
16 (“AOD”). (AR 22.) At **step two**, the ALJ found that Plaintiff has the following
17 severe impairments: migraine headaches, recurrent kidney stones, and cervicalgia.
18 (*Id.*) At **step three**, the ALJ found that Plaintiff “does not have an impairment or
19 combination of impairments that meets or medically equals the severity of one of
20 the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.” (AR 27.)

21 Before proceeding to step four, the ALJ found that Plaintiff has the residual
22 functional capacity (“RFC”) to:

23 [P]erform light work . . . except the claimant has no limitation in her
24 ability to sit, stand, or walk. She can lift or carry up to 20 pounds
25 frequently and 10 pounds occasionally. She can occasionally climb
stairs or ramps, balance, stoop, kneel, crouch, and crawl. She is

26 ¹ Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 precluded from climbing ladders, ropes, or scaffolding. She is limited
2 to occasional reaching with the right upper extremity.

3 (*Id.*)

4 At **step four**, based on Plaintiff's RFC and the VE's testimony, the ALJ
5 found that Plaintiff was capable of performing past relevant work as a sales
6 representative, customer service representative, and check cashing clerk, and
7 therefore the ALJ did not proceed to step five. (AR 31.) Accordingly, the ALJ
8 determined that Plaintiff has not been under a disability from the AOD through the
9 date of the decision. (AR 32.)

10 **III. STANDARD OF REVIEW**

11 Under 42 U.S.C. § 405(g), a district court may review the Commissioner's
12 decision to deny benefits. A court must affirm an ALJ's findings of fact if they are
13 supported by substantial evidence and if the proper legal standards were applied.
14 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). "'Substantial evidence'
15 means more than a mere scintilla, but less than a preponderance; it is such relevant
16 evidence as a reasonable person might accept as adequate to support a conclusion."
17 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
18 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
19 evidence requirement "by setting out a detailed and thorough summary of the facts
20 and conflicting clinical evidence, stating his interpretation thereof, and making
21 findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

22 "[T]he Commissioner's decision cannot be affirmed simply by isolating a
23 specific quantum of supporting evidence. Rather, a court must consider the record
24 as a whole, weighing both evidence that supports and evidence that detracts from
25 the Secretary's conclusion." *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
26 2001) (citations and internal quotation marks omitted). "'Where evidence is
27 susceptible to more than one rational interpretation,' the ALJ's decision should be
28 upheld." *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing

1 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at
2 882 (“If the evidence can support either affirming or reversing the ALJ’s
3 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court
4 may review only “the reasons provided by the ALJ in the disability determination
5 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*
6 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d
7 871, 874 (9th Cir. 2003)).

8 **IV. DISCUSSION**

9 Plaintiff raises the following issues for review: (1) whether the ALJ properly
10 rejected the opinions of Plaintiff’s treating, examining, and non-examining doctors;
11 (2) whether the ALJ properly assessed Plaintiff’s RFC and her ability to perform
12 past relevant work; (3) whether the ALJ properly assessed third-party testimony;
13 and (4) whether the ALJ properly discredited Plaintiff’s testimony. (JS 3.) Plaintiff
14 contends that the ALJ failed to properly assess the medical opinions, failed to
15 include all of Plaintiff’s limitations in the RFC, failed to assess the credibility of
16 third-party testimony, and failed to provide clear and convincing reasons for
17 discrediting Plaintiff’s testimony. (JS 4, 33-34, 49-50, 51-52.) The Commissioner
18 disagrees. (JS 15, 41, 43, 50-53.) For the reasons below, the Court agrees with
19 Plaintiff regarding the assessment of the medical opinion evidence and remands on
20 that ground.

21 **A. The ALJ’s Credibility Determination Is Supported By Substantial** 22 **Evidence**²

23 Plaintiff argues that the ALJ failed to provide clear and convincing reasons to
24 reject Plaintiff’s testimony. (JS 53.) The Commissioner argues that the ALJ’s
25 credibility findings are supported by substantial evidence. (JS 57.)

26
27 ² The ALJ determined that some opinion evidence was based on Plaintiff’s
28 discredited subjective allegations, and the ALJ accordingly assigned those opinions
less weight. Therefore, the Court addresses the issue of Plaintiff’s credibility first.

1 **1. Plaintiff’s Testimony**

2 Plaintiff testified that she was laid off from work in April 2008 after she had
3 been on short-term disability due to stress and kidney stones. (AR 81, 86.)
4 Plaintiff testified that she “loved working” and “wanted to be back working.” (AR
5 86.) When she tried to go back to work, she was informed that they were phasing
6 out her department, and she was offered a position on the loading dock. (*Id.*)
7 Because Plaintiff “wasn’t even able to work that even on [her] best day,” she
8 resigned. (*Id.*) Plaintiff then collected unemployment benefits for “as long as [she]
9 could,” about two years. (AR 81.) While she was on unemployment, Plaintiff had
10 “a lot of medical problems going on at the same time too.” (AR 82.) Plaintiff
11 testified that she had to let the unemployment office know that she was looking for
12 work, but after going on a couple of interviews, she did not think that she would be
13 able to do the things required at those jobs. (*Id.*) She continued to look for work
14 similar to what she had been doing before, but she was not able to do the required
15 lifting. (AR 84.)

16 Plaintiff testified that her right shoulder prevents her from lifting, and she has
17 numbness down her arm. (*Id.*) Plaintiff drops things a lot and cannot 10-key like
18 she used to. (*Id.*) After Plaintiff told her doctor that she was having pain in her
19 chest, she was told that she had a herniated disc in her neck. (*Id.*) Plaintiff had an
20 MRI performed in the past year that revealed changes in her cervical spine; she had
21 waited almost six years for the MRI due to insurance reasons. (AR 84-85.)
22 Plaintiff stated that she has a “type II acromion type shoulder” that prevents her
23 from being able to lift in an up-and-down motion. (AR 84.) Plaintiff cannot lift
24 cases of water at the grocery store, hold a case of soda, carry a gallon of milk, or
25 bear any weight. (AR 84-85.)

26 Plaintiff testified that she cannot work because she is in pain all day. (AR
27 87.) Plaintiff’s shoulder and neck cause migraines with “radiating,” “shooting,”
28 and “burn[ing]” pain down her arm. (*Id.*) Plaintiff also has a “grinding type

1 stabbing pain” in her back and shoulder. (*Id.*) Plaintiff always wears pain patches
2 on her shoulders. (*Id.*)

3 In the past year and a half, Plaintiff began having problems with her right
4 hip. (*Id.*) Plaintiff explained that it felt like her hip was “popping in two different
5 places,” and after the popping, she felt pain in her right hip. (*Id.*) Plaintiff’s doctor
6 thought it was bursitis and gave her pain medication, which did not help. (AR 87-
7 88.) Plaintiff now wakes up with shooting pain from the top of her back down to
8 the bottom of her right leg. (AR 88.)

9 Plaintiff stated that one of her doctors thinks she has fibromyalgia. (*Id.*)
10 Plaintiff is vitamin D deficient and takes a lot of vitamin D supplements every day.
11 (*Id.*) Plaintiff “generally just do[es] not feel good all the time” and is in pain. (*Id.*)

12 Plaintiff lives with her disabled mother, her adult son, and her teenage
13 daughter. (AR 89.) At the time of the hearing, Plaintiff was not receiving mental
14 health treatment. (*Id.*) Plaintiff saw her therapist two weeks before the hearing, but
15 that was the first time she had gone to therapy since her prior April 2013 hearing.
16 (*Id.*) Plaintiff stated that she had not been going to therapy because her daughter
17 began seeing a doctor at the same facility. (AR 90.) Plaintiff explained that there
18 was a conflict of interest, and she was “going to have to do a direct admit” for her
19 daughter unless she took herself off the doctor’s list and substituted her daughter in
20 her place. (AR 104.) Plaintiff currently takes Xanax, which is prescribed by her
21 general physicians. (AR 90.)

22 Plaintiff testified that during the relevant time period,³ she had been having
23 four to five migraines per week and went to urgent care or the hospital “probably
24 every other day.” (AR 92.) The more severe migraines were related to her
25 shoulder and her neck, and she would get a really bad migraine if her shoulder got

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27 ³ Although the ALJ’s decision found that Plaintiff was not disabled through the date
28 of decision (AR 32), at the hearing, the ALJ instructed Plaintiff to address the time
prior to December 31, 2013, her date last insured (AR 92; *see* AR 21).

1 really cold or if she had “slept funny.” (AR 94.) Plaintiff testified that at that time,
2 she “thought every migraine was as bad as the one before,” but looking back on that
3 now, “they weren’t as bad.” (*Id.*) About two out of four or five migraines at that
4 time were truly bad migraines, and the other ones were due to the residual effects of
5 her pain medications. (*Id.*) During the more severe migraines, Plaintiff went to
6 urgent care for pain shots and nausea medication, then stayed in bed for two or
7 three days. (AR 95.) Plaintiff testified that during these migraines, she would only
8 use the restroom and sleep, and she did not shower. (*Id.*)

9 After Plaintiff received the May 2013 decision denying her benefits, she read
10 the ALJ’s reasoning. (AR 92.) Plaintiff noted that the ALJ had said that Plaintiff’s
11 testimony was believable, but the ALJ “looked back to [Plaintiff’s] history and saw
12 that [she] had had a lot of pain medication.” (*Id.*) Plaintiff started thinking about
13 all the pain shots that she had received. (*Id.*) Instead of going to urgent care to
14 immediately receive a pain shot, she “start[ed] to see if [she] could get through this
15 hour.” (*Id.*) When Plaintiff started receiving pain shots less frequently, her
16 migraines became less frequent. (AR 93.) Plaintiff stated that she now knows that
17 her migraines and foginess came from the Demerol and morphine that she was
18 receiving. (*Id.*) Plaintiff has been controlling everything with her doctor and has
19 not had a pain shot in a year, which is “something that [she’s] really proud of.”
20 (*Id.*) When Plaintiff read the ALJ’s first decision, she “did take that heavy” and
21 reconsidered her viewpoint of, “I need to be here and I’m in pain and you need to
22 give this to me.” (*Id.*) Plaintiff realized that she “needed to take hold of it” and be
23 present with her children. (*Id.*) Plaintiff noted that she had been spending more
24 time at urgent care than at home where she could lie down, be comfortable, take her
25 prescribed medications, sleep, and get up feeling better without the drowsiness from
26 the medication. (*Id.*) Plaintiff explained that by doing that instead of getting so
27 many pain shots, her migraines started getting better. (AR 95.)

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1 Plaintiff now has about two to four migraines per month, and they are not as
2 bad as they used to be. (AR 90.) Plaintiff attributed two migraines per month to
3 her shoulder and neck pain, and one or two to her menstrual period. (AR 96.)
4 Plaintiff then stated that she currently has about two migraines per week. (AR 97.)
5 Plaintiff explained that, due to the stress of the hearing, she had more migraines
6 than usual during the previous month. (*Id.*) Plaintiff explained that in November,
7 she had three or four migraines, in December, she had about two migraines, and in
8 January, she had no migraines. (*Id.*) Plaintiff stated that on average, she has two to
9 six migraines per month, and during a bad migraine, she spends two or three days
10 in bed. (AR 98.) One migraine can cause her to “lay out” for a week, without
11 television or noise. (AR 90.) Plaintiff testified that she gets nauseous and dizzy,
12 and she had fallen twice due to migraines. (*Id.*)

13 Plaintiff stated that she currently has one kidney stone, but she had not
14 passed one in about six months, “which is good.” (AR 91.) Plaintiff has been
15 taking cranberry supplements, which have helped, and she has not been on
16 antibiotics for a year. (*Id.*) Plaintiff cannot lie down when she has kidney stone
17 pain and needs to move around. (*Id.*) When she has kidney stone pain at the same
18 time as her shoulder and back pain, she’s “just a crying mess.” (*Id.*) Plaintiff will
19 go to the emergency room “if there’s something [she] needed to get.” (*Id.*) One of
20 Plaintiff’s doctors is “really good about diets,” and after working with that doctor,
21 “it seems to have gotten better.” (*Id.*)

22 Plaintiff testified that she has difficulty brushing her teeth due to her shoulder
23 pain, and she is not brushing her teeth correctly because of the way she has to hold
24 the brush. (AR 98.) Her right hand gets sore after two minutes, and then she has to
25 use her left hand. (AR 98-99.) Plaintiff cannot hold a pen and write without pain,
26 and her writing “comes out terrible.” (AR 99.) Plaintiff cannot wear fastened bras
27 anymore, only sports bras. (*Id.*) Plaintiff also does not wear tied shoes or button-
28 up pants. (*Id.*) All of her clothing is “soft and is able to pull on easy.” (*Id.*)

1 Plaintiff cannot cook or bake anymore; she cannot even use a whisk. (AR 88, 100.)
2 Plaintiff's right hand is also very sensitive to the heat from the oven. (AR 100.)
3 With her right hand, Plaintiff can lift her three-pound Chihuahua from the floor to
4 her bed. (*Id.*)

5 Plaintiff lies down at home because it hurts to sit after 20 or 30 minutes. (AR
6 101.) The pain begins in her lower back and moves into her shoulder. (*Id.*)
7 Plaintiff gets a "gnawing, burning pain" under her shoulder blade, and pain
8 medication sometimes does not work. (*Id.*) Plaintiff also has difficulty standing
9 because her shoulder tends to slope down. (*Id.*) Plaintiff testified that walking is as
10 difficult as standing, and she explained that when she took her daughter to the mall,
11 Plaintiff had to sit down within 10 minutes. (AR 101-02.) Plaintiff is not very
12 steady when walking, and her "right leg kind of rounds in when [she] walk[s]." (*Id.*)
13 (AR 102.)

14 Plaintiff testified that before December 2013, she could stand for about 30
15 minutes. (*Id.*) It was difficult to walk more than two blocks, and she could sit for
16 only 45 minutes. (AR 103.) Plaintiff could carry her rat terrier then, who weighs
17 about five or six pounds. (*Id.*) At that time, when Plaintiff got out of bed, she felt
18 "like [she] had had a bad workout." (AR 102.) Now, when Plaintiff gets out of
19 bed, the balls of her feet hurt. (*Id.*)

20 Plaintiff stated that she has OCD, which leads her to clean with a toothbrush
21 when she showers, wash her hair three times so that nothing bad happens, and brush
22 her hair 200 times on each side. (AR 105.) Plaintiff avoids everyone and does not
23 like answering her door. (*Id.*) When Plaintiff is around people, her heart runs and
24 she starts to feel sick. (AR 106.) Because she does not drive and needs to depend
25 on someone else to drive her, she "avoid[s] it all together." (*Id.*) Plaintiff has not
26 seen her father, who lives in the same town, in two years. (*Id.*) Plaintiff also did
27 not see her grandmother when she visited the town the prior summer. (*Id.*)

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1 Plaintiff testified that the last time she left the house by herself was when she
2 was raped in July 2010. (*Id.*)

3 **2. Applicable Legal Standards**

4 “In assessing the credibility of a claimant’s testimony regarding subjective
5 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
6 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
7 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
8 presented objective medical evidence of an underlying impairment which could
9 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler*
10 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting
11 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the
12 ALJ does not find evidence of malingering, the ALJ must provide specific, clear
13 and convincing reasons for rejecting a claimant’s testimony regarding the severity
14 of her symptoms. *Id.* The ALJ must identify what testimony was found not
15 credible and explain what evidence undermines that testimony. *Holohan v.*
16 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). “General findings are
17 insufficient.” *Lester*, 81 F.3d at 834.

18 **3. Discussion**

19 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
20 “medically determinable impairments could reasonably be expected to cause some
21 of the alleged symptoms,” but found that Plaintiff’s “statements concerning the
22 intensity, persistence and limiting effects of these symptoms are not entirely
23 credible.” (AR 31.) The ALJ relied on the following reasons: (1) receipt of
24 unemployment benefits; (2) lack of objective medical evidence to support the
25 alleged severity of symptoms; (3) inconsistent statements and conduct; and (4)
26 drug-seeking behavior. (AR 30-31.) No malingering allegation was made, and
27 therefore, the ALJ’s reasons must be “clear and convincing.”

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1 medical problems going on at the same time too.

2 Q: Did you report that to the unemployment people?

3 A: I had to let them know I was looking for work but when I
4 had gone to a couple interviews but those things they
5 wanted me to do I wasn't going to be able to do the jobs
6 that they—

7 Q: Right. But the point is did you understand that in order
8 to accept money from the unemployment division, that
9 you are representing that you are able to work?

10 A: Right.

11 Counsel: Your honor, that can be part-time work, unemployment.

12 Q: I asked her full time. Her response was yes, she was
13 looking for full time.

14 A: I'm sorry, it was full time, part time work.

15 (AR 82.)

16 Although Plaintiff's response that she was looking for "full time, part time
17 work" is arguably ambiguous, the ALJ's interpretation that Plaintiff held herself out
18 as available for full-time employment is a rational one, especially in the context of
19 Plaintiff's counsel raising the issue regarding part-time work. Accordingly, the
20 Court finds that Plaintiff's continued receipt of unemployment benefits after her
21 AOD is a clear and convincing reason for discounting Plaintiff's credibility. *See*
22 *Ryan*, 528 F.3d at 1198 (an ALJ's decision should be upheld "[w]here evidence is
23 susceptible to more than one rational interpretation"); *Johnson v. Shalala*, 60 F.3d
24 1428, 1434 (9th Cir. 1995) ("We will not reverse credibility determinations of an
25 ALJ based on contradictory or ambiguous evidence.").

26 **b. Reason No. 2: Lack of Objective Medical Evidence**

27 The lack of supporting objective medical evidence cannot form the sole basis
28 for discounting testimony, but it is a factor that the ALJ may consider in making a
credibility determination. *Burch*, 400 F.3d at 681.

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1 The ALJ found that Plaintiff’s credibility was harmed by her “exaggeration
2 of symptoms and the extreme functional limitations” that she described. (AR 30.)
3 The ALJ observed that Plaintiff “alleged total incapacitation in that the claimant
4 must lie down throughout the day and cannot leave the house,” and that Plaintiff
5 “could not even take care of her personal hygiene or perform any normal activities
6 without assistance.” (*Id.*) The ALJ found that “[t]here is no support in the record
7 for these extreme limitations” and noted that “[m]edical signs and findings have
8 been consistently benign.” (AR 30.)

9 The ALJ’s characterization of Plaintiff’s “extreme” limitations is not entirely
10 accurate. Plaintiff testified that she can leave the house if needed when she has
11 someone to accompany her, but she does not leave her house by herself. (*See* AR
12 101, 337, 340.) Plaintiff also described having difficulty with personal care,
13 grooming, and household tasks, but she did not allege a complete inability to take
14 care of her hygiene or perform all activities. Plaintiff can dress herself in simple
15 clothing and use the restroom unassisted. (AR 337.) Plaintiff explained that she
16 tries to use her left hand for most tasks, but it tires easily. (AR 98-99, 337-40.)
17 She stated that she can bathe, wash her hair, shave, and brush her teeth with some
18 difficulty and exhaustion. (AR 98-99, 337.) Plaintiff tries to prepare meals and do
19 laundry, but because repeated motions with her right hand cause her pain, Plaintiff
20 receives help from her mother or children. (AR 337-38.)

21 While the ALJ found “no support in the record” for extreme limitations, the
22 record is not completely devoid of support for Plaintiff’s impairments as alleged.
23 Dr. Wikholm diagnosed Plaintiff with anxiety disorder. (AR 773, 775, 808, 817,
24 950-51.) During Plaintiff’s September 2011 psychiatric evaluation, Dr. DiGiario
25 diagnosed Plaintiff with mild bipolar I disorder, chronic PTSD, and dependent
26 personality features, and she assessed that Plaintiff’s psychosocial stressors were
27 severe. (AR 475.) As discussed in Section IV.B.2, *infra*, the ALJ erred in giving
28 these diagnoses little weight. When Plaintiff complained of right-side chest pain

1 that extended down her right arm in August 2009, treating physician Alexander B.
2 Meyer, M.D., opined that “C5-6 dermatome actually would probably explain her
3 pain pretty well.” (AR 443.) In September 2009, Plaintiff complained of pain
4 radiating from her neck into her chest and down her right arm. (AR 438.) Dr.
5 Meyer noted that “[i]t has a good description for neuropathic pain” and suspected
6 that it was caused by a C-5 herniated disc in Plaintiff’s neck. (*Id.*) Dr. Meyer noted
7 slightly diminished reflexes in Plaintiff’s right arm, possibly due to muscle tension,
8 and he “definitely couldn’t get a triceps reflex on the right compared to the left.”
9 (*Id.*) Dr. Meyer also observed that conservative treatment had not been helpful in
10 treating Plaintiff’s pain. (*Id.*) An October 2013 MRI revealed a type 2 acromion
11 with mild to moderate acromioclavicular joint degenerative changes, which “may
12 be contributing to clinical impingement syndrome.” (AR 1095-96.)

13 The ALJ erred in misstating Plaintiff’s alleged limitations and, accordingly,
14 in finding no support for these mischaracterized limitations. *See Gallant v.*
15 *Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984) (error for an ALJ to ignore or
16 misstate the competent evidence in the record in order to justify his conclusion).
17 The Court finds that this reason is not a clear and convincing reason, supported by
18 substantial evidence, to discount Plaintiff’s credibility.

19 **c. Reason No. 3: Inconsistent Statements and Conduct**

20 As part of the credibility determination, the ALJ may consider
21 inconsistencies between the claimant’s testimony and his other statements, conduct,
22 and daily activities. *See Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.
23 1997); *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). Inconsistencies
24 between symptom allegations and daily activities may act as a clear and convincing
25 reason to discount a claimant’s credibility. *See Tommasetti v. Astrue*, 533 F.3d
26 1035, 1039 (9th Cir. 2008); *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991),
27 but a claimant need not be utterly incapacitated to obtain benefits. *Fair v. Bowen*,
28 885 F.2d 597, 603 (9th Cir. 1989). “If a claimant is able to spend a substantial part

1 of his day engaged in pursuits involving the performance of physical functions that
2 are transferable to a work setting, a specific finding as to this fact may be sufficient
3 to discredit a claimant's allegations." *Morgan v. Comm'r of Soc. Sec. Admin.*, 169
4 F.3d 595, 600 (9th Cir. 1999); accord *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th
5 Cir. 2001).

6 In finding that Plaintiff's symptoms and limitations were "exaggerated," the
7 ALJ noted that Plaintiff "acknowledged to Dr. Singleton that she could vacuum,
8 wash dishes, and perform light household chores." (AR 30.) This does not detract
9 from her overall credibility, as the record does not show that this consumed a
10 substantial part of Plaintiff's day. In fact, in Plaintiff's Function Report, she states
11 that household chores take "hours" to complete. (AR 338.) Further, the mere
12 ability to perform some tasks is not necessarily indicative of an ability to perform
13 work activities because "many home activities are not easily transferable to what
14 may be the more grueling environment of the workplace, where it might be
15 impossible to periodically rest or take medication." *Fair*, 885 F.2d at 603; see also
16 *Molina*, 674 F.3d at 1112-13 (the ALJ may discredit a claimant who "participat[es]
17 in everyday activities indicating capacities that are transferable to a work setting").
18 The critical difference between such activities "and activities in a full-time job are
19 that a person has more flexibility in scheduling the former . . . , can get help from
20 other persons . . . , and is not held to a minimum standard of performance, as she
21 would be by an employer." *Bjornson v. Astrue*, 671 F.3d 640, 647 (7th Cir. 2012)
22 (cited with approval in *Garrison v. Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014)).
23 Indeed, Plaintiff stated that she needs someone to assist her, and her mother and
24 children do most things for her. (AR 338.) Plaintiff also repeatedly stated that
25 when she does attempt tasks, she tries to use her left hand. (See AR 337-38.)

26 The ALJ also noted that during the examination with Dr. Singleton, Plaintiff
27 "moved about actively" and was able to walk around the room, sit comfortably
28 without difficulty, get on and off the examining table without difficulty, disrobe,

1 and remove the sling from her right arm. (*Id.*) These observations are not
2 inconsistent with Plaintiff’s alleged limitations. Plaintiff explained that she can
3 dress herself with simple clothing that pulls on easily and does not have buttons,
4 zippers, or small clasps. (AR 99, 337.) Plaintiff testified that she feels pain when
5 sitting after 20 or 30 minutes (AR 101), but there is no indication of the length of
6 the examination. Plaintiff also indicated that she could walk short distances (*see*
7 AR 101-02 (about 10 minutes), AR 341 (“1 block”)), which is consistent with Dr.
8 Singleton’s observation that Plaintiff “was able to walk to the examination room
9 without any assistance” (AR 468).

10 The Court finds that this reason is not a clear and convincing reason,
11 supported by substantial evidence, to discount Plaintiff’s credibility.

12 **d. Reason No. 4: Drug-Seeking Behavior**

13 An ALJ’s finding that a claimant has engaged in drug-seeking behavior is a
14 clear and convincing reason for rejecting symptom testimony. *See Edlund v.*
15 *Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001), *as amended on reh’g* (Aug. 9,
16 2001).

17 The ALJ noted “numerous reports in the record” in which Plaintiff requested
18 narcotic pain relief medication despite a lack of medical findings. (AR 31.)
19 However, Plaintiff’s requests were not completely unsupported by medical findings
20 at Westside Family Practice. (*See* AR 425-45.) On March 5, 2010, Plaintiff passed
21 a small kidney stone, and her urinalysis tested positive for nitrites, leukocytes, and a
22 large amount of blood. (AR 432.) She requested and was given a shot of Femeol
23 and Phenergan. (*Id.*) Plaintiff presented her kidney stone for analysis on March 8,
24 2010, and she received another pain shot. (AR 431.) At a follow-up visit on March
25 10, 2010, Dr. Meyer noted a “presumed infection” and considered referring
26 Plaintiff to another doctor or the emergency room. (*Id.*) Plaintiff again received a
27 pain shot. (*Id.*) The next day, Plaintiff returned with lower abdominal and pelvic
28 pain, and another injection of Demerol and Phenergan was given. (AR 430.) On

1 March 15 and 16, 2010, Plaintiff again received Demerol and Phenergan for a
2 migraine. (*Id.*) Plaintiff returned on March 17, 2010. (AR 429.) Although
3 Plaintiff first requested a pain shot, she then said that the pain was not severe, so
4 she was given a syringe of Phenergan to take home for later. (*Id.*) On March 19,
5 2010, Dr. Meyer suggested stopping narcotics “for fear of continuing a rebound
6 effect” and recommended against Demerol. (AR 428.) On April 8 and 9, 2010,
7 Plaintiff had follow-up visits after going to Urgent Care for an ankle sprain. (AR
8 427.) She also had blood in her urine and suspected another kidney stone, so
9 Plaintiff was given Demerol and Phenergan “with some reluctance.” (*Id.*) The ALJ
10 noted that on April 13, 2010, Dr. Meyer gave Plaintiff a Demerol injection for
11 kidney pain, but “would not prescribe any other medication until she had an
12 abdominal CT scan.” (AR 31.) In fact, Dr. Meyer ordered a CT scan “for stone
13 protocol” and stated that “[f]urther treatment will obviously depend on the CT
14 results.” (AR 426.) Dr. Meyer also observed, “I haven’t written her a prescription
15 for narcotics, and I don’t think she has gotten very much, if any, from other doctors
16 either.” (*Id.*) About a week later, the scan results were negative and Dr. Meyer
17 noted that Plaintiff had received Phenergan from urgent care, but “[s]he is not
18 taking any narcotic pills.” (*Id.*) In May 2010, Plaintiff returned with blood in her
19 urine and possible kidney stones and a urinary tract infection. (AR 425.) Dr.
20 Meyer “reluctantly agreed” to give her a pain shot and warned against going to
21 urgent care for pain shots. (*Id.*)

22 The ALJ also observed that “Dr. Singleton noted the claimant was taking
23 numerous pain relief medications despite the fact that x-rays of the right foot and
24 right shoulder were negative.” (AR 31.) However, Dr. Singleton’s summary of
25 Plaintiff’s records does not support a finding that Plaintiff was using these
26 medications despite normal medical findings. In his evaluative report, Dr.
27 Singleton stated:

28

1 Review of her records revealed the need for multiple pain medications
2 in May 2010. She had a prescription for Xanax, alprazolam, Vicodin,
3 Percocet, and lorazepam at one visit for renewal. In addition, she had
4 a right foot x-ray done, which showed no evidence of a fracture or
injury, right clavicle, again revealed no acute fracture or dislocation
seen. This was in 2009.

5 (AR 467.) The ALJ's mischaracterization of this part of Dr. Singleton's report was
6 in error. *See Gallant*, 753 F.2d at 1456 (9th Cir. 1984).

7 Finally, the ALJ noted Plaintiff's "huge number of medical appointments" at
8 Centers for Family Health between 2008 and 2011. (AR 31; *see* AR 579-726.)
9 Plaintiff frequently complained of migraines and kidney stone pain and requested
10 pain medication. The ALJ noted that "[t]he possibility of drug-seeking behavior
11 was raised in these records" and that Plaintiff "appears to be motivated by a
12 narcotic pain medication dependence." (AR 31.) In August 2009, Plaintiff
13 requested Demerol for kidney stones and declined the doctor's recommendation of
14 Percocet. (AR 700.) Treatment notes state that the doctor "will not give
15 injectables" and that Plaintiff left the clinic upset. (*Id.*) In July 2010, Demerol
16 addiction was discussed, and Plaintiff was given an educational handout. (AR
17 660.) In September 2010, it was noted that Plaintiff "knows we can't keep giving
18 Demerol every other day – should be discussed." (AR 631.) Plaintiff was not
19 taking narcotics in October 2010 (AR 619) and did not want Demerol shots during
20 an early November 2010 visit (AR 615). However, on November 21, 2010,
21 treatment notes show that Plaintiff "requested narcotics but there was no clear
22 indication for pain meds at this time." (AR 609.)

23 Although some records suggest an objective medical basis for Plaintiff's
24 pursuit of pain relief, the evidence can rationally support the ALJ's finding of drug-
25 seeking behavior. Accordingly, the Court must uphold her interpretation of the
26 evidence. *See Ryan*, 528 F.3d at 1198; *Robbins*, 466 F.3d at 882.

27 ///

1 **4. Conclusion**

2 Because the Court found that two of the ALJ’s reasons for discounting
3 Plaintiff’s credibility are not clear and convincing, the Court must decide whether
4 the ALJ’s reliance on those reasons was harmless error. *Carmickle v. Comm’r of*
5 *Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008). The relevant inquiry “is not
6 whether the ALJ would have made a different decision absent any error,” but
7 whether the ALJ’s decision is still “legally valid, despite such error.” *Id.* The
8 “remaining reasoning *and ultimate credibility determination* [must be] . . .
9 supported by substantial evidence in the record.” *Id.* (emphasis in original) (citing
10 *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)). Here,
11 given the discussion above concerning Plaintiff’s receipt of unemployment benefits
12 and drug-seeking behavior, the Court concludes the ALJ’s credibility finding is
13 legally valid and supported by substantial evidence.

14 **B. The ALJ Did Not Properly Assess The Medical Opinion Evidence**

15 Plaintiff argues that the ALJ improperly rejected the opinions of five doctors.
16 (JS 4.) The Commissioner argues that the ALJ properly evaluated all of the
17 medical opinion evidence. (JS 15-16.)

18 **1. Applicable Legal Standards**

19 Courts give varying degrees of deference to medical opinions based on the
20 provider: (1) treating physicians who examine and treat; (2) examining physicians
21 who examine, but do not treat; and (3) non-examining physicians who do not
22 examine or treat. *Valentine v. Comm’r, Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th
23 Cir. 2009). Most often, the opinion of a treating physician is given greater weight
24 than the opinion of a non-treating physician, and the opinion of an examining
25 physician is given greater weight than the opinion of a non-examining physician.
26 *See Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

27 The ALJ must provide “clear and convincing” reasons to reject the ultimate
28 conclusions of a treating or examining physician. *Embrey v. Bowen*, 849 F.2d 418,

1 422 (9th Cir. 1988); *Lester*, 81 F.3d at 830-31. When a treating or examining
2 physician’s opinion is contradicted by another opinion, the ALJ may reject it only
3 by providing specific and legitimate reasons supported by substantial evidence in
4 the record. *Orn*, 495 F.3d at 633; *Lester*, 81 F.3d at 830; *Carmickle*, 533 F.3d at
5 1164. A non-examining physician’s opinion can constitute substantial evidence if it
6 is supported by other evidence in the record and is consistent with it. *Morgan*, 169
7 F.3d at 600. “An ALJ can satisfy the ‘substantial evidence’ requirement by ‘setting
8 out a detailed and thorough summary of the facts and conflicting evidence, stating
9 his interpretation thereof, and making findings.’” *Garrison*, 759 F.3d at 1012
10 (citation omitted).

11 **2. Discussion**

12 **a. Treating Physician Gary Wikholm, M.D.**

13 Dr. Wikholm completed several written statements. In October 2011 and
14 April 2012, he provided identical responses on half-page check-box forms,
15 indicating that Plaintiff had a chronic medical condition and was unable to work.
16 (AR 782.) In June 2012, Dr. Wikholm completed a one-page form in which he
17 indicated that Plaintiff could lift less than 10 pounds for a half hour per day, could
18 stand or walk for one hour per 8-hour workday, must alternate sitting and standing,
19 and had moderate limitations in using her upper extremities. (AR 784.) Dr.
20 Wikholm also completed an RFC Questionnaire in April 2013. (AR 820-24.) He
21 noted that emotional factors, including Plaintiff’s depression, anxiety, and
22 personality disorder, affect the severity of Plaintiff’s symptoms and limitations.
23 (AR 821.) Dr. Wikholm indicated that Plaintiff’s symptoms would frequently
24 interfere with her attention and concentration, and he found that she was incapable
25 of even low-stress work. (*Id.*) Dr. Wikholm stated that Plaintiff could sit or stand
26 for 15 minutes at a time, for a total of less than 2 hours per 8-hour workday. (AR
27 821-22.) He anticipated that Plaintiff would need to take 15-minute unscheduled
28 breaks every one or two hours and would be absent from work more than four days

1 per month. (AR 822-23.) Dr. Wikholm limited Plaintiff to occasionally lifting or
2 carrying less than 10 pounds, rarely looking down, and occasionally moving her
3 head in other directions. (AR 823.) He imposed postural limitations and
4 significant manipulation limitations, noting that Plaintiff can never use her right
5 hand to grasp or twist, and can perform fine manipulations with her right fingers
6 and reach with her right arm only 10% of the time. (*Id.*)

7 The ALJ gave “little probative weight” to the single-page forms, finding
8 them “totally unsupported by a diagnosis, objective findings, or discussion of
9 treatment.” (AR 25, 30.) The ALJ also noted a lack of objective findings or
10 discussion of treatment in the RFC Questionnaire. (*Id.*) This is a specific and
11 legitimate reason for the ALJ to discount Dr. Wikholm’s opinion. *See Magallanes*,
12 881 F.2d at 751 (an ALJ may disregard a treating physician’s opinion that is brief,
13 conclusory, and lacks clinical findings); *Crane v. Shalala*, 76 F.3d 251, 253 (9th
14 Cir. 1996) (“The ALJ, however, permissibly rejected [psychological evaluations]
15 because they were check-off reports that did not contain any explanation of the
16 bases of their conclusions.”). Further, the ALJ noted that Dr. Wikholm “appears to
17 be a sympathetic doctor who bases his treatment on subjective complaints without
18 objective medical support.” (AR 31.) The ALJ observed that his diagnostic
19 impressions appeared to be “a reiteration of the subjective complaints voiced by the
20 claimant.” (*Id.*) An opinion that is based on a claimant’s discredited subjective
21 complaints may be rejected. *See Tommasetti*, 533 F.3d at 1041; *Tonapetyan*, 242
22 F.3d at 1149; *Morgan*, 169 F.3d at 602; *Fair*, 885 F.2d at 605. In sum, the ALJ
23 gave specific and legitimate reasons for rejecting Dr. Wikholm’s imposed
24 limitations.

25 Dr. Wikholm’s opinions also state a diagnosis of chronic anxiety disorder.
26 (AR 784, 820; *see* AR 773, 775, 808, 817, 950-51.) The ALJ found that this
27 diagnosis was of “little probative weight” because Dr. Wikholm is not a psychiatrist
28 or psychologist. (AR 25.) However, as a treating physician who prescribed

1 psychotropic medication (*see* AR 808), Dr. Wikholm’s opinion cannot be
2 disregarded on that basis. *See Lester*, 81 F.3d at 833 (the opinion of a treating
3 physician who provides treatment for a claimant’s psychiatric impairment
4 “constitutes ‘competent psychiatric evidence’ and may not be discredited on the
5 ground that he is not a board certified psychiatrist”). This portion of Dr.
6 Wikholm’s opinion was improperly rejected.

7 **b. Examining Psychologist Deborah DiGiario, Ph.D.**

8 Dr. DiGiario performed a comprehensive psychiatric evaluation of Plaintiff in
9 September 2011. During this evaluation, Plaintiff complained of anxiety and
10 depression, and she reported a history of childhood molestation, abusive parents,
11 abusive relationships, and a recent rape. (AR 472.) Plaintiff stated that she went to
12 a psychiatrist once in 2010, and she also received counseling at Cal Works about
13 twice a week for two months. (AR 473.) Plaintiff’s primary care doctor prescribed
14 Xanax or Ativan after she reported being depressed and anxious, but she has never
15 taken an antidepressant or mood stabilizer. (*Id.*) Dr. DiGiario observed that
16 Plaintiff’s affect was tearful and her mood was depressed. (AR 474.)

17 Dr. DiGiario diagnosed mild bipolar I disorder, chronic PTSD, dependent
18 personality features, and severe psychosocial stressors. (AR 475.) She found mild
19 impairment in Plaintiff’s ability to perform detailed and complex tasks, maintain
20 regular attendance in the workplace, and complete a normal workday or workweek
21 without interruptions from a psychiatric condition. (AR 476.) Dr. DiGiario also
22 found that Plaintiff’s ability to deal with stress in a competitive workplace
23 environment was moderately impaired. (*Id.*)

24 The ALJ gave Dr. DiGiario’s assessed limitations “little probative weight”
25 because “there is no mental health evidence to support any functional limitations
26 due to a mental disorder.” (AR 22; *see* AR 31.) However, as a psychologist, Dr.
27 DiGiario can provide a diagnosis that serves as objective medical evidence. *See*
28 *Savannah v. Astrue*, 252 F. App’x 783, 785 (9th Cir. 2007) (“Diagnosis by a

1 medical expert constitutes objective medical evidence of an impairment.”); *see also*
2 *Rodriguez v. Bowen*, 876 F.2d 759, 762 (9th Cir. 1989) (“Disability may be proved
3 by medically-acceptable clinical diagnoses, as well as by objective laboratory
4 findings.” (quoting *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975))).

5 In finding no support for Dr. DiGiario’s opinion, the ALJ also noted that
6 Plaintiff has not received significant mental health care. (AR 22, 24, 31.)
7 However, the Ninth Circuit has criticized the practice of discrediting evidence
8 based on a lack of treatment “both because mental illness is notoriously
9 underreported and because it is a questionable practice to chastise one with a mental
10 impairment for the exercise of poor judgment in seeking rehabilitation.”
11 *Regennitter v. Comm’r of Soc. Sec. Admin.*, 166 F.3d 1294, 1299-300 (9th Cir.
12 1999) (internal quotation marks omitted) (citing *Nguyen v. Chater*, 100 F.3d 1462,
13 1465 (9th Cir. 1996)). At her evaluation, Plaintiff stated that she “has wanted to go
14 to treatment,” but she did not seek any treatment for herself because her last
15 husband was against it. (AR 473.) At the hearing, Plaintiff explained that a
16 conflict of interest developed when Plaintiff’s daughter had to begin seeing the
17 same therapist that Plaintiff had been seeing. (AR 104.) The ALJ further erred by
18 relying on Plaintiff’s limited mental health treatment without considering her
19 explanation for the limited treatment. *See Marquez v. Astrue*, No. EDCV 09-1921-
20 E, 2010 WL 1709204, at *2 (C.D. Cal. Apr. 27, 2010) (“Given the uncertainty
21 surrounding the extent to which these errors [of relying on irregular treatment
22 without considering the claimant’s explanation] may have affected the ALJ’s
23 decision, including the ALJ’s determinations to reject Plaintiff’s credibility and to
24 discount [a treating physician]’s opinion, the Court is unable to conclude that the
25 errors were harmless.”).

26 The Court finds that the ALJ failed to provide clear and convincing reasons
27 to reject the opinion of Dr. DiGiario.

28 ///

1 **c. Examining Physician Michael Singleton, M.D.**

2 Dr. Singleton completed a comprehensive internal medicine evaluation of
3 Plaintiff in September 2011. At the examination, Plaintiff complained of pain in
4 her right neck, right shoulder, and right hand. (AR 467.) Dr. Singleton noted that
5 Plaintiff had a prescription for Xanax, alprazolam, Vicodin, Percocet, and
6 lorazepam in May 2010. (AR 468.) He also noted no evidence of fracture or injury
7 in Plaintiff's 2009 x-rays of her right foot, right clavicle, and right shoulder. (*Id.*)
8 Plaintiff reported that her right hand pain made it difficult to write, but Dr.
9 Singleton noted that "she is able to write for three hours, as she states in her report."
10 (*Id.*) Plaintiff told Dr. Singleton that she helped with vacuuming, dishes, and light
11 housework. (*Id.*) Dr. Singleton observed that Plaintiff could walk to the
12 examination room without assistance, sat comfortably during the exam, was able to
13 get on and off the examination table, removed the sling from her arm, and could
14 take off her shoes and put them back on, although with some difficulty. (AR 468-
15 69.) Plaintiff's right hand and right radial side of her upper arm had dermatomal
16 abnormalities involving C8 dermatome. (AR 469.) Dr. Singleton observed
17 neuropathy involving the C3-C8 dermatomes on the right upper extremity. (AR
18 470.) Compared to her left shoulder, Plaintiff's right shoulder demonstrated 50
19 degrees less forward flexation, 20 degrees less extension, 50 degrees less abduction,
20 20 degrees less adduction, 20 degrees less internal rotation, and the same external
21 rotation. (*Id.*) Plaintiff's upper extremity and grip strength was 4/5 on the right and
22 5/5 on the left. (*Id.*) Dr. Singleton found that Plaintiff could lift or carry 50 pounds
23 occasionally and 25 pounds frequently, "involving the left hand mainly." (AR
24 471.) He also limited Plaintiff to occasional climbing, reaching, handling,
25 fingering, and feeling involving the right hand, with no limitations involving the
26 left hand. (*Id.*)

27 The ALJ found "no objective basis" in the record for these hand limitations.
28 (AR 29). The ALJ observed that Plaintiff admitted to Dr. Singleton that she could

1 write with her right hand for three hours. (AR 29.) In fact, Dr. Singleton noted that
2 Plaintiff “is able to write for three hours, as she states in her report.” (AR 468.) In
3 her Function Report, which Dr. Singleton reviewed (*see* AR 467), Plaintiff stated,
4 “Filling out this form took me 3 hours. Writing is very difficult for me. . . . I’m
5 embarrassed to write and my writing. . . . I decided to fill out this form myself to
6 show how bad my writing gets. My hand (right) is in a lot of pain and cramped.”
7 (AR 343.) Plaintiff’s Report contains several other statements attesting to the
8 difficulty that she had in completing the form. (*See* AR 336 (“I also have a difficult
9 time writing. I apologize if this becomes difficult to read.”), AR 337 (“Writing is
10 painful. I’m in a lot of pain filling out this form.”).) Dr. Singleton’s observation
11 that Plaintiff “is able to write for three hours” does not accurately reflect Plaintiff’s
12 assertion. In turn, the ALJ mischaracterized Dr. Singleton’s report, noting that
13 during the examination, Plaintiff “admitted she could write with her right hand for
14 three hours.” (AR 24, 29.) The ALJ erred in relying on this reason. *See Reddick*,
15 157 F.3d at 722-23 (finding that the ALJ’s conclusions were unsupported by the
16 record as a whole when “[i]n essence, the ALJ developed his evidentiary basis by
17 not fully accounting for the context of materials or all parts of the testimony and
18 reports,” and his “paraphrasing of record material is not entirely accurate regarding
19 the content or tone of the record”).

20 The ALJ also noted that Plaintiff acknowledged being able to complete
21 household tasks, and she was able to disrobe and remove her sling during the
22 examination. (AR 29.) However, as previously discussed, Plaintiff explained that
23 she can dress herself and perform simple tasks when primarily using her left hand.
24 (*See* AR 99, 337-38.) These activities are not inconsistent with the limitations that
25 Dr. Singleton imposed on Plaintiff’s right—but not left—arm and hand. (*See* AR
26 471.)

27 The ALJ ultimately rejected Dr. Singleton’s hand limitations and gave them
28 “little probative weight” due to the “complete lack of medical support.” (AR 29-

1 30.) The ALJ stated that Plaintiff had “good range of motion” and “normal muscle
2 strength” through the examination. (AR 24, 29.) But Dr. Singleton actually noted
3 Plaintiff’s “limited range of motion involving the right shoulder” (AR 469),
4 “discomfort during rightward cervical motion” (AR 470), and “difficulty raising her
5 right shoulder” (*id.*). Plaintiff’s right shoulder mobility and extension were notably
6 less than that on her left shoulder, and her strength was somewhat reduced on her
7 right side. (*Id.*) The ALJ also failed to acknowledge Dr. Singleton’s findings of
8 neuropathy and dermatomal abnormalities. (AR 469-70.) The ALJ erred in
9 seemingly ignoring this competent evidence from Dr. Singleton’s independent
10 examination of Plaintiff. *See Tonapetyan*, 242 F.3d at 1149 (“[The examining
11 physician]’s opinion alone constitutes substantial evidence, because it rests on his
12 own independent examination of [the claimant].”).

13 The Court finds that the ALJ failed to provide clear and convincing reasons
14 to reject the opinion of Dr. Singleton.

15 **d. State Agency Medical Consultants Roger Fast, M.D. and**
16 **H.M. Estrin, M.D.**

17 Dr. Fast reviewed Plaintiff’s medical records upon initial review of her
18 application in October 2011. He assessed that Plaintiff could lift or carry 20
19 pounds occasionally and 10 pounds frequently; stand, walk, or sit for about 6 hours
20 in a normal 8-hour workday; and occasionally push or pull due to right shoulder
21 pain and mild weakness. (AR 136.) Dr. Fast cited Plaintiff’s neck and shoulder
22 pain in limiting Plaintiff to occasional crawling and climbing of ladders, ropes, and
23 scaffolds. (AR 136-37.) Dr. Fast also found that Plaintiff’s ability to reach, handle,
24 finger, and feel were limited on her right side “due to neck and right shoulder pain
25 with pain into right arm.” (AR 137.) Overall, he recommended “a light RFC with
26 manipulative restriction on the right.” (*Id.*)

27 Dr. Estrin reviewed Plaintiff’s medical records upon reconsideration of her
28 application in May 2012. His RFC assessment was largely the same as Dr. Fast’s

1 assessment, with slight variations in postural limitations. (See AR 161-62.) Dr.
2 Estrin also found that Plaintiff had no limitations regarding her skin receptors'
3 ability to feel. (AR 163.)

4 The ALJ summarized both consultants' assessments of Plaintiff's limitations,
5 but the ALJ did not assign these opinions any weight, nor did she explicitly accept
6 or reject them. (AR 27.) "Where an ALJ does not explicitly reject a medical
7 opinion or set forth specific, legitimate reasons for crediting one medical opinion
8 over another, [s]he errs." *Garrison*, 759 F.3d at 1012-13 (internal citation omitted).

9 The Court finds that the ALJ failed to provide any legally sufficient reasons
10 to reject the opinions of Dr. Fast and Dr. Estrin.

11 In sum, the Court determines that the ALJ failed to provide legally adequate
12 reasons for rejecting the opinions, or portions of opinions, of Plaintiff's treating and
13 examining physicians, as described above. Further, the Court concludes that
14 remand for further administrative proceedings is appropriate to allow the ALJ to
15 reassess the medical opinions of these physicians.

16 **C. The Court Declines To Address Plaintiff's Remaining Arguments**

17 Having found that remand is warranted, the Court declines to address
18 Plaintiff's remaining arguments that the ALJ improperly rejected Plaintiff's
19 mother's testimony and improperly assessed Plaintiff's RFC and her ability to
20 perform past work. See *Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012)
21 ("Because we remand the case to the ALJ for the reasons stated, we decline to reach
22 [plaintiff's] alternative ground for remand."); see also *Augustine ex rel. Ramirez v.*
23 *Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) ("[The] Court need not
24 address the other claims plaintiff raises, none of which would provide plaintiff with
25 any further relief than granted, and all of which can be addressed on remand.").

26 **D. Remand For Further Administrative Proceedings**

27 Because further administrative review could remedy the ALJ's errors,
28 remand for further administrative proceedings, rather than an award of benefits, is

1 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)
2 (remanding for an award of benefits is appropriate in rare circumstances). Before
3 ordering remand for an award of benefits, three requirements must be met: (1) the
4 Court must conclude that the ALJ failed to provide legally sufficient reasons for
5 rejecting evidence; (2) the Court must conclude that the record has been fully
6 developed and further administrative proceedings would serve no useful purpose;
7 and (3) the Court must conclude that if the improperly discredited evidence were
8 credited as true, the ALJ would be required to find the claimant disabled on
9 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court
10 retains flexibility to remand for further proceedings “when the record as a whole
11 creates serious doubt as to whether the claimant is, in fact, disabled within the
12 meaning of the Social Security Act.” *Id.* (citation omitted).

13 Here, remand for further administrative proceedings is appropriate. The
14 Court finds that the ALJ failed to appropriately weigh and consider the medical
15 opinion evidence of record.

16 On remand, the ALJ shall reassess the opinions of Plaintiff’s treating and
17 examining physicians and other sources, and provide legally adequate reasons for
18 any portion of an opinion that the ALJ discounts or rejects. The ALJ shall then
19 reassess Plaintiff’s RFC and proceed through step four and step five, if necessary,
20 to determine what work, if any, Plaintiff is capable of performing.

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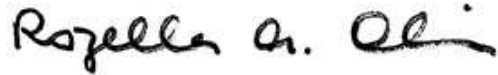
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V. CONCLUSION

IT IS ORDERED that Judgment shall be entered REVERSING the decision of the Commissioner denying benefits, and REMANDING the matter for further proceedings consistent with this Order.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.



DATED: January 26, 2018

ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

NOTICE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW, LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.