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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARISA RODUSKY,	)	Case No. CV 18-08505-JEM
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
v.	)	AFFIRMING DECISION OF THE
	)	COMMISSIONER OF SOCIAL SECURITY
ANDREW M. SAUL,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

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**PROCEEDINGS**

On October 3, 2018, Marisa Rodusky (“Plaintiff” or “Claimant”) filed a complaint seeking review of the decision by the Commissioner of Social Security (“Commissioner”) denying Plaintiff’s applications for Child’s Insurance benefits and for Supplemental Security Income benefits. (Dkt. 1.) The Commissioner filed an Answer on February 4, 2019. (Dkt. 16.) On May 10, 2019, the parties filed a Joint Stipulation (“JS”). (Dkt. 19.) The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record (“AR”), the Court concludes that the Commissioner’s decision must be affirmed and this case dismissed with prejudice.

## BACKGROUND

1  
2 Plaintiff is a 25 year-old female who applied for Child's Insurance benefits and  
3 Supplemental Security Income benefits on July 30, 2015, alleging disability beginning January  
4 1, 2014. (AR 23.) The ALJ determined that Plaintiff has not engaged in substantial gainful  
5 activity since January 1, 2014, the alleged onset date.<sup>1</sup> (AR 25.)

6 Plaintiff's claims were denied initially on January 26, 2016. (AR 23.) Plaintiff filed a  
7 timely request for hearing, which was held before Administrative Law Judge ("ALJ") James  
8 Carberry on June 15, 2017, in Norwalk, California. (AR 23.) Plaintiff appeared and testified at  
9 the hearing and was represented by counsel. (AR 23.) Vocational expert ("VE") Joseph H.  
10 Torres also appeared and testified at the hearing. (AR 23.)

11 The ALJ issued an unfavorable decision on July 6, 2017. (AR 23-31.) The Appeals  
12 Council denied review on August 8, 2018. (AR 1-3.)

## DISPUTED ISSUES

13  
14 As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as  
15 grounds for reversal and remand:

- 16 1. Whether the ALJ properly addressed the opinions of the consultative examiner.
- 17 2. Whether the ALJ properly considered the opinions of the State Agency  
18 psychologist.
- 19 3. Whether the ALJ properly developed the record.

## STANDARD OF REVIEW

20  
21 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether  
22 the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v.  
23 Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846  
24 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and  
25 based on the proper legal standards).

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<sup>1</sup> Born on June 19, 1994, Plaintiff had not attained age 22 as of January 1, 2014, her alleged  
onset date. (AR 25.)

1 Substantial evidence means “more than a mere scintilla,’ but less than a  
2 preponderance.” Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.  
3 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such relevant evidence as a  
4 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at  
5 401 (internal quotation marks and citation omitted).

6 This Court must review the record as a whole and consider adverse as well as  
7 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where  
8 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be  
9 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).  
10 “However, a reviewing court must consider the entire record as a whole and may not affirm  
11 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882  
12 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495  
13 F.3d 625, 630 (9th Cir. 2007).

#### 14 THE SEQUENTIAL EVALUATION

15 The Social Security Act defines disability as the “inability to engage in any substantial  
16 gainful activity by reason of any medically determinable physical or mental impairment which  
17 can be expected to result in death or . . . can be expected to last for a continuous period of not  
18 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has  
19 established a five-step sequential process to determine whether a claimant is disabled. 20  
20 C.F.R. §§ 404.1520, 416.920.

21 The first step is to determine whether the claimant is presently engaging in substantial  
22 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging  
23 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,  
24 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or  
25 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not  
26 significantly limit the claimant’s ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must  
27 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.  
28 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment

1 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,  
2 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the  
3 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.  
4 2001). Before making the step four determination, the ALJ first must determine the claimant's  
5 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can  
6 still do despite [his or her] limitations" and represents an assessment "based on all the relevant  
7 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the  
8 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),  
9 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

10 If the claimant cannot perform his or her past relevant work or has no past relevant work,  
11 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the  
12 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,  
13 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,  
14 consistent with the general rule that at all times the burden is on the claimant to establish his or  
15 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established  
16 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform  
17 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support  
18 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence  
19 demonstrating that other work exists in significant numbers in the national economy that the  
20 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.  
21 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and  
22 entitled to benefits. Id.

### 23 THE ALJ DECISION

24 In this case, the ALJ determined at step one of the sequential process that Plaintiff has  
25 not engaged in substantial gainful activity since January 1, 2014, the alleged onset date. (AR  
26 25.)

1 At step two, the ALJ determined that Plaintiff has the following medically determinable  
2 severe impairments: morbid obesity; degenerative disc disease with spondylosis; and a  
3 depressive disorder with anxiety. (AR 25.)

4 At step three, the ALJ determined that Plaintiff does not have an impairment or  
5 combination of impairments that meets or medically equals the severity of one of the listed  
6 impairments. (AR 26-27.)

7 The ALJ then found that Plaintiff has the RFC to perform medium work, as defined in 20  
8 CFR §§ 404.1567(c) and 416.967(c), with the following limitations:

9 Claimant is able to lift, carry, push, and pull 25 pounds frequently and 50 pounds  
10 occasionally; able to stand and/or walk six hours in an eight-hour workday; able to  
11 sit six hours in an eight-hour workday; able to climb ladders, ropes and scaffolds  
12 occasionally; otherwise, able to perform frequent climbing, as well as frequent  
13 crouching, balancing, stooping, crawling and kneeling; able to perform frequent  
14 gross and fine manipulative tasks; unable to work at unprotected heights or near  
15 dangerous machinery; and able to perform only simple, routine tasks, requiring no  
16 more than occasional interaction with the general public, co-workers, or  
17 supervisors.

18 (AR 27-29.) In determining the above RFC, the ALJ made a determination that Plaintiff's  
19 subjective symptom allegations were "not entirely consistent" with the medical evidence and  
20 other evidence of record. (AR 28.) Plaintiff does not challenge this finding.

21 At step four, the ALJ found that Plaintiff has no past relevant work. (AR 29.) The ALJ,  
22 however, also found at step five that, considering Claimant's age, education, and RFC, there  
23 are jobs that exist in significant numbers in the national economy that Claimant can perform,  
24 including the jobs of janitorial worker and warehouse worker. (AR 29-30.)

25 Consequently, the ALJ found that Claimant is not disabled within the meaning of the  
26 Social Security Act. (AR 30-31.)

## DISCUSSION

1 The ALJ decision must be affirmed. The ALJ's RFC is supported by substantial  
2 evidence. The ALJ did not fail to fully develop the record.  
3

### 4 I. THE ALJ'S RFC IS SUPPORTED BY SUBSTANTIAL EVIDENCE

5 Plaintiff contends that the ALJ improperly rejected the opinions of consulting examiner  
6 Dr. Zhang and State agency reviewing physician Dr. Myles Friedland. The Court disagrees.

#### 7 A. Relevant Federal Law

8 The ALJ's RFC is not a medical determination but an administrative finding or legal  
9 decision reserved to the Commissioner based on consideration of all the relevant evidence,  
10 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20  
11 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence  
12 in the record, including medical records, lay evidence, and the effects of symptoms, including  
13 pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.

14 In evaluating medical opinions, the case law and regulations distinguish among the  
15 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)  
16 those who examine but do not treat the claimant (examining physicians); and (3) those who  
17 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20  
18 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In  
19 general, an ALJ must accord special weight to a treating physician's opinion because a treating  
20 physician "is employed to cure and has a greater opportunity to know and observe the patient  
21 as an individual." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If  
22 a treating source's opinion on the issues of the nature and severity of a claimant's impairments  
23 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is  
24 not inconsistent with other substantial evidence in the case record, the ALJ must give it  
25 "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

26 Where a treating doctor's opinion is not contradicted by another doctor, it may be  
27 rejected only for "clear and convincing" reasons. Lester, 81 F.3d at 830. However, if the  
28 treating physician's opinion is contradicted by another doctor, such as an examining physician,

1 the ALJ may reject the treating physician's opinion by providing specific, legitimate reasons,  
2 supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495  
3 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating  
4 physician's opinion is contradicted by an examining professional's opinion, the Commissioner  
5 may resolve the conflict by relying on the examining physician's opinion if the examining  
6 physician's opinion is supported by different, independent clinical findings. See Andrews v.  
7 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an  
8 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing  
9 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician's  
10 opinion is contradicted by another physician's opinion, an ALJ must provide specific and  
11 legitimate reasons to reject it. Id. However, "[t]he opinion of a non-examining physician cannot  
12 by itself constitute substantial evidence that justifies the rejection of the opinion of either an  
13 examining physician or a treating physician"; such an opinion may serve as substantial  
14 evidence only when it is consistent with and supported by other independent evidence in the  
15 record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

## 16 **B. Analysis**

17 Plaintiff, a 25-year-old woman, alleges she is unable to work due to obesity, depression,  
18 high blood pressure, back and right leg problems, anxiety, and skin fungus. (AR 28.) She  
19 claims she has difficulty sitting or standing and cannot lift even five pounds. (AR 28.) She says  
20 she has a mass on her neck, but the consulting examiner did not observe any mass and the  
21 medical evidence of record does not document any mass. (AR 28.) She also alleges panic  
22 attacks every week or two. (AR 28.) The ALJ did find that Plaintiff has the medically  
23 determinable impairments of morbid obesity, degenerative disc disease with spondylosis, and  
24 depressive disorder with anxiety. (AR 25.) The ALJ, however, also found that Plaintiff had the  
25 residual functional capacity to perform a restricted range of medium work limited to "only  
26 simple, routine tasks, requiring no more than occasional interaction with the general public, co-  
27 workers, or supervisors." (AR 27.)

28

1 On December 9, 2015, Plaintiff underwent a consultative psychological examination with  
2 Dr. J. Zhang, Psy. D. (AR 349-355.) His findings on which the ALJ relied are set forth in  
3 Finding No. 4 on severity. (AR 26-27.) Dr. Zhang diagnosed depressive disorder, with anxiety.  
4 (AR 352.) Dr. Zhang opined Plaintiff would be moderately impaired in several areas of mental  
5 functioning: the ability to understand, remember, and carry out detailed and complex  
6 instructions; to maintain concentration, persistence, and pace; to interact appropriately with co-  
7 workers, supervisors, and the public; and to respond appropriately to changes in the work  
8 setting. (AR 353.) Plaintiff was mildly impaired in daily work activity and in maintaining  
9 consistent attendance. (AR 353.)

10 Plaintiff contends that the ALJ did not discuss Dr. Zhang's opinions when addressing  
11 Plaintiff's RFC, did not include any of Dr. Zhang's limitations in Plaintiff's RFC, and rejected  
12 Dr. Zhang's opinion without explanation. The ALJ, however, did not reject Dr. Zhang's opinion.  
13 He relied on Dr. Zhang's opinions and limitations in Finding No. 4 on severity. (AR 26-27.)  
14 Dr. Zhang's opinions (AR 353) were not an RFC determination because Dr. Zhang did not  
15 assess whether Plaintiff could perform any unskilled work. There was no reason, therefore, to  
16 discuss Dr. Zhang's opinion in Finding No. 5 regarding Plaintiff's RFC.

17 The ALJ, moreover, translated Dr. Zhang's opinions into the RFC he assessed. The  
18 Ninth Circuit has held that an RFC finding of unskilled work (simple, repetitive tasks) is  
19 consistent with findings that a claimant had moderate limitations in concentration, persistence,  
20 and pace. Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1173-76 (9th Cir. 2008). The Ninth  
21 Circuit also has rejected a claim like the one here that the ALJ should have included moderate  
22 limitations in concentration and pace in the RFC. Mitchell v. Colvin, 642 F. App'x 731, 732-33  
23 (9th Cir. 2016). The Court there held that the ALJ adequately accounted for the Claimant's  
24 moderate limitations in concentration, persistence, and pace by limiting Plaintiff to simple,  
25 repetitive tasks in the RFC. Id.

26 The State agency reviewing physician Dr. Myles Friedland did provide an RFC  
27 assessment. (AR 29, 76-79.) Like Dr. Zhang, Dr. Friedland made findings regarding Plaintiff's  
28 mental limitations, including moderate limitations in concentration and persistence. (AR 78,

1 92.) Dr. Friedland, however, also assessed an RFC for “simple one and two-step mental tasks”  
2 with “limited contact with co-workers and the general public.” (AR 79, 93.) See Stubbs, 539 at  
3 1173 (consulting examiner did not assess “whether [claimant] could perform unskilled work on  
4 a sustained basis” but the State agency psychologist did when he concluded Plaintiff retained  
5 the ability to “carry out simple tasks”.) Relying on Dr. Friedman’s opinion, the ALJ determined  
6 that Plaintiff had the mental RFC to perform “only simple, routine tasks, requiring no more than  
7 occasional interaction with the general public, co-workers and supervisors.” (AR 27.)

8 Thus, the ALJ did not reject Dr. Zhang’s opinion. There was no reason to discuss  
9 Dr. Zhang’s mental limitations when addressing Plaintiff’s RFC because Dr. Zhang’s opinions  
10 were not an RFC assessment. Nor was there any reason to include moderate limitations in  
11 concentration and pace in the RFC. See Stubbs, 539 F.3d at 1173-74 (ALJ did not reject the  
12 consultative examiner’s findings but “properly incorporated . . . [mild and moderate] limitations .  
13 . . related to pace and . . . other mental limitations regarding attention, concentration and  
14 adaptation” in assessing an RFC for “simple, routine, repetitive” work”). The ALJ properly  
15 translated Dr. Zhang’s and Dr. Friedland’s mild to moderate mental limitations into an RFC for  
16 simple, routine tasks. Id. at 1174.

17 Plaintiff makes the same argument regarding Dr. Friedland as he made about  
18 Dr. Zhang. Plaintiff contends that Dr. Friedland found Plaintiff has moderate limitations in  
19 certain areas of mental functioning that were not discussed in Finding No. 5 regarding Plaintiff’s  
20 RFC and were not included in Plaintiff’s RFC. Again, the limitations Plaintiff identifies are not  
21 an RFC because they do not assess Plaintiff’s ability to perform in the workplace. Dr.  
22 Friedland, however, did limit Plaintiff to “simple one and two-step mental tasks” with “limited  
23 contact with co-workers and the general public.” (AR 79, 93.) The ALJ did not reject Dr.  
24 Friedland’s limitations. He incorporated them into Plaintiff’s RFC.

25 The ALJ did not reject the opinions of Dr. Zhang or Dr. Friedland. The ALJ’s RFC is  
26 supported by substantial evidence.

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1 **II. THE ALJ DID NOT FAIL TO FULLY DEVELOP THE RECORD**

2 Dr. Zhang diagnosed Plaintiff with depressive disorder, with anxiety and “Rule out,  
3 borderline intellectual functioning.” (AR 352.) Plaintiff contends that the ALJ should have  
4 developed the record by ordering psychometric testing to determine whether Plaintiff had the  
5 impairment of borderline intellectual functioning, whether it was severe, and whether it meets or  
6 equals Listing 12.05.

7 The ALJ does have a special duty to develop the record fully and fairly. Tonapetyan v.  
8 Halter, 242 F.3d 1144, 1150 (9th Cir. 2001); Smolen, 80 F.3d at 1288. The duty to develop the  
9 record further, however, is “triggered only when there is ambiguous evidence or when the  
10 record is inadequate to allow proper evaluation of the evidence.” Mayes v. Massanari, 276  
11 F.3d 453, 459 (9th Cir. 2001). A claimant has the burden to prove disability with medical and  
12 other evidence. 20 C.F.R. § 404.1512(a); Burch v. Barnhart, 400 F.3d 676, 683 (9th Cir. 2005).  
13 The regulations leave it to the agency’s discretion whether to order a consultative examination.  
14 20 C.F.R. § 404.1519a(a).

15 Here, the record evidence is neither ambiguous nor inadequate in regard to Plaintiff’s  
16 mental status. Dr. Zhang, after noting Plaintiff demonstrates below average intellectual  
17 functioning, nonetheless concluded that Plaintiff had no impairment with respect to carrying out  
18 simple instructions, and only mild impairments in carrying out routine work activity, including  
19 consistent attendance and basic safety. (AR 352-353.) Dr. Friedland found that Plaintiff had  
20 only mild limitation in performing activities of daily living. (AR 74.) He concluded that Plaintiff  
21 could perform simple one and two-step mental tasks with limited contact with co-workers and  
22 the general public. (AR 79, 93.) The ALJ was entitled to rely on Dr. Zhang’s findings and Dr.  
23 Friedland’s RFC opinion and findings regarding Plaintiff’s work-related functional limitations.  
24 The ALJ, moreover, found Plaintiff’s subjective symptom allegations “not entirely consistent”  
25 with the medical evidence and other evidence of record. (AR 28.) Plaintiff does not challenge  
26 this finding. This Court “must uphold an ALJ’s decision so long as it is supported by substantial  
27 evidence and it is not based on legal error.” Lockwood v. Comm’r of Soc. Sec., 616 F.3d 1068,  
28 1071 (9th Cir. 2010). No regulation or case law requires an ALJ to obtain an additional

1 examination or testing simply because the ALJ found that the evidence of record does not  
2 support disability.

3 Plaintiff contends that the record is inadequate to evaluate Plaintiff's mental  
4 impairments, but it is the ALJ's responsibility to resolve conflicts in the medical evidence and  
5 ambiguities in the record. Andrews, 53 F.3d at 1039. Where the ALJ's interpretation of the  
6 record is reasonable, as it is here, it should not be second-guessed. Rollins v. Massanari, 261  
7 F.3d 853, 857 (9th Cir. 2001); Thomas, 278 F.3d at 954 ("Where the evidence is susceptible to  
8 more than rational interpretation, one of which supports the ALJ's decision, the ALJ's  
9 conclusion must be upheld.").

10 The ALJ did not fail to fully develop the record.

11 \* \* \*

12 The ALJ's nondisability determination is supported by substantial evidence and free of  
13 legal error.

14 **ORDER**

15 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the  
16 Commissioner of Social Security and dismissing this case with prejudice.

17  
18 DATED: November 21, 2019

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*/s/ John E. McDermott*  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE