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

K.F., a minor by and through her
Guardian Ad Litem BRENDA
JEAN F.,¹

Case No. 2:19-cv-04860-MAA

Plaintiff,

**MEMORANDUM DECISION AND
ORDER AFFIRMING DECISION OF
THE COMMISSIONER**

v.

ANDREW M. SAUL,²
Commissioner of Social Security,
Defendant.

On June 4, 2019, a Complaint was filed on behalf of Plaintiff seeking review of the Social Security Commissioner’s final decision denying her application for Supplemental Security Income pursuant to Title XVI of the Social Security Act. This matter is fully briefed and ready for decision. For the reasons discussed

¹ Plaintiff’s name is partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

² The Commissioner of Social Security is substituted as the Defendant pursuant to Federal Rule of Civil Procedure 25(d).

1 below, the Commissioner’s final decision is affirmed, and this action is dismissed
2 with prejudice.

3
4 **PROCEDURAL HISTORY**

5 On September 23, 2015, an application for Supplemental Security Income
6 was protectively filed on behalf of Plaintiff, a child under age 18, alleging disability
7 beginning on March 7, 2007. (Administrative Record (“AR”) 178-84.) Plaintiff
8 alleged disability due to chronic migraine headaches. (AR 208.) After her
9 applications were denied initially and on reconsideration, Plaintiff requested a
10 hearing before an Administrative Law Judge (“ALJ”). (AR 88-89.) At a hearing
11 held on June 18, 2018, at which Plaintiff’s mother appeared with counsel, ALJ
12 Robert Freedman heard testimony from Plaintiff’s mother and a medical expert.
13 (AR 33-48.)

14 In a decision issued on July 11, 2018, the ALJ denied Plaintiff’s application
15 after making the following findings pursuant to the Commissioner’s three-step
16 evaluation for determining disability in children. (AR 15-28; *see* 20 C.F.R.
17 § 416.924.) Plaintiff, a school-age child on the date the application was filed, had
18 not engaged in substantial gainful activity since the September 23, 2015 application
19 date. (AR 18.) She had the severe impairment of migraines. (*Id.*) She did not
20 have an impairment or combination of impairments that met, medically equaled, or
21 functionally equaled the requirements of one of the impairments from the
22 Commissioner’s Listing of Impairments. (AR 18-28.) Accordingly, the ALJ
23 concluded that Plaintiff was not disabled as defined by the Social Security Act.
24 (AR 28.)

25 On April 8, 2019, the Appeals Council denied Plaintiff’s request for review.
26 (AR 1-3.) Thus, the ALJ’s decision became the final decision of the
27 Commissioner. Plaintiff filed the Complaint herein on June 4, 2019.

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1 **DISPUTED ISSUES**

2 1. Whether the ALJ improperly dismissed the opinions provided by the
3 Plaintiff’s treating physicians.

4 2. Whether the ALJ failed to properly consider the testimony provided by
5 the Plaintiff’s mother.
6 (Joint Stipulation (“JS”), at 2.)
7

8 **STANDARD OF REVIEW**

9 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s final
10 decision to determine whether the Commissioner’s findings are supported by
11 substantial evidence and whether the proper legal standards were applied. *See*
12 *Treichler v. Commissioner of Social Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir.
13 2014). Substantial evidence means “more than a mere scintilla” but less than a
14 preponderance. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter*
15 *v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007). Substantial evidence is “such
16 relevant evidence as a reasonable mind might accept as adequate to support a
17 conclusion.” *Richardson*, 402 U.S. at 401. The Court must review the record as a
18 whole, weighing both the evidence that supports and the evidence that detracts from
19 the Commissioner’s conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is
20 susceptible of more than one rational interpretation, the Commissioner’s
21 interpretation must be upheld. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.
22 2007).
23

24 **DISCUSSION**

25 **A. Treating Physician’s Opinion (Issue One).**

26 In Issue One, Plaintiff argues that the ALJ did not provide sufficient reasons
27 to reject the opinions of treating physicians James Kim, M.D., and Paul Round,
28 D.O., both at Antelope Valley Community Clinic (“AVCC”). (JS, at 2-7, 11-13.)

1 **1. Legal Standard.**

2 **a. Determining disability in children.**

3 Once an ALJ has determined that a child is not engaged in substantial gainful
4 activity and has a severe impairment or combination of impairments, the ALJ must
5 determine whether the impairments meet, medically equal, or functionally equal a
6 listed impairment. 20 C.F.R. § 416.924. As relevant, to functionally equal a listed
7 impairment,³ the child’s impairments must result in (1) “marked” limitations in two
8 of six specified domains of functioning; or (2) an “extreme” limitation in one
9 domain. 20 C.F.R. § 416.926a(a). The domains are: (1) acquiring and using
10 information; (2) attending and completing tasks; (3) interacting and relating with
11 others; (4) moving about and manipulating objects; (5) caring for oneself; and
12 (6) health and physical well-being. *Id.* at (b)(1)(i)-(vi).

13 When considering whether a child has “marked” or “extreme” limitations in
14 any domain, the ALJ must compare her functioning to the typical functioning of
15 children her age who do not have impairments. 20 C.F.R. § 416.926a(f)(1). A
16 child has an “extreme” limitation in a domain when her impairments interfere “very
17 seriously” with her ability to independently initiate, sustain, or complete activities.
18 *Id.* at (e)(3)(i). A child has a “marked” limitation in a domain when her
19 impairments “seriously” interfere with the foregoing abilities. *Id.* at (e)(2)(1).

20 **b. Evaluating a treating physician’s opinion.**

21 A treating physician’s opinion is entitled to special weight because he or she
22 is “most able to provide a detailed, longitudinal picture” of a claimant’s medical
23 impairments and bring a perspective to the medical evidence that cannot be
24 obtained from objective medical findings alone. *See* 20 C.F.R. § 416.927(c)(2);
25 *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989). “The treating physician’s
26 opinion is not, however, necessarily conclusive as to either a physical condition or

27 ³ Plaintiff does not challenge the ALJ’s determination (AR 18) that Plaintiff did not
28 meet or medically equal a listed impairment. (*See generally* JS.)

1 the ultimate issue of disability.” *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
2 1989). The weight given a treating physician’s opinion depends on whether it is
3 supported by sufficient medical data and is consistent with other evidence in the
4 record. *See* 20 C.F.R. § 416.927(c)(2).

5 If a treating physician’s opinion is controverted, it may be rejected only if the
6 ALJ makes findings setting forth specific and legitimate reasons that are based on
7 the substantial evidence of record. *See id.* “The ALJ can meet this burden by
8 setting out a detailed and thorough summary of the facts and conflicting clinical
9 evidence, stating his interpretation thereof, and making findings.” *Magallanes*, 881
10 F.2d at 751 (internal quotation marks omitted).

11 Here, Plaintiff’s treating physicians’ opinions were contrary to the opinions
12 of the testifying medical expert and the state agency physicians. (*See infra.*) Thus,
13 the ALJ was required to state specific and legitimate reasons based on substantial
14 evidence in the record before rejecting the treating physicians’ opinions.

15 **2. Background.**

16 **a. AVCC – August 2014 through September 2014.**

17 In August 2014, an AVCC physician listed Plaintiff’s primary diagnosis as
18 migraine headache. (AR 413-14.) In September 2014, Plaintiff’s mother reported
19 that Plaintiff had a three-day headache. Plaintiff’s mother further asserted that
20 Plaintiff’s headaches were increasing in frequency, possibly because of perfumes
21 used by people at school. Dr. Round diagnosed Plaintiff with migraine and
22 recommended that Plaintiff continue with her headache management plan. (AR
23 321-24.)

24 **b. CHLA – November 2014 through May 2015**

25 Plaintiff had multiple visits to the neurology clinic at Children’s Hospital of
26 Los Angeles (“CHLA”) in 2014 and 2015. (AR 265-92.) Her CHLA treatment
27 regimen included prophylactic medication (*e.g.*, amitriptyline and zonisamide),
28 analgesics (*e.g.*, sumatriptan and ibuprofen), and supplements (MigreLief). (*See*

1 *generally id.*) In November 2014, Plaintiff's mother reported that Plaintiff was
2 having headaches almost every day, up from three times a week or month. (AR
3 265-66.) The headaches were 6/10 to 10/10 in intensity, with nausea, photophobia,
4 and phonophobia. (AR 265.) Plaintiff's mother reported that on three occasions in
5 August and October of 2014, Plaintiff had to go to the emergency room for
6 migraine.⁴ She reported that medication stopped Plaintiff's headaches on those
7 visits. (*Id.*) The neurologist noted that a March 2012 CT brain scan was normal
8 and an April 2013 brain MRI was unremarkable. (AR 267.) The neurologist
9 prescribed a prophylactic medication. As well, the neurologist instructed Plaintiff's
10 mother not to give Plaintiff ibuprofen more than three times per week, as a
11 precaution against rebound headaches. (AR 267, 268.)

12 In March 2015, Plaintiff's mother reported that the prophylactic medication
13 had not improved her headaches, but Tylenol with codeine resolved them. (AR
14 270.) She further reported that Plaintiff had been taken out of school for excessive
15 absences. Plaintiff was getting "A's" in her at-home classes. (*Id.*) The neurologist
16 diagnosed Plaintiff with "long standing headaches which are consistent with
17 chronic migraine with medication overuse headache." (AR 273.) The neurologist
18 prescribed a different prophylactic medication. (AR 274.)

19 In April 2015, Plaintiff's mother reported that Plaintiff's headaches had
20 become less frequent but more severe. (AR 278.) The neurologist diagnosed
21 Plaintiff with chronic migraine and medication overuse headache. (AR 278-79.) In
22 a later April 2015 visit, Plaintiff's mother reported that Plaintiff's headaches had
23 decreased and that sumatriptan took away the pain. The neurologist diagnosed
24 Plaintiff with chronic migraine, not intractable. (AR 280-84.)

25 In May 2015, Plaintiff's mother again reported that Plaintiff's headaches had
26 decreased, from nine the previous month to seven in the instant month. She again

27 ⁴ The record does not include treatment notes from Plaintiff's ER visits. (*See* AR
28 264-420.)

1 reported that sumatriptan took away the pain. The neurologist diagnosed Plaintiff
2 with chronic migraine, not intractable and without migrainosus. (AR 286-90.) The
3 neurologist noted, “[Plaintiff’s] headaches are now episodic and she is no longer
4 overusing acute abortive medicaitons [*sic*].” (AR 289.)

5 **c. AVCC– June 2015 through December 2016**

6 Between June 2015 and November 2017, Plaintiff’s AVCC physicians kept
7 Plaintiff on a regimen of prophylactic medication and analgesics. (*See generally*
8 AR 293-334, 354-55, 360-420.) In June 2015, Plaintiff’s mother reported to Dr.
9 Round that Plaintiff’s migraines were improving and she was down to nine
10 headaches per month. (AR 311.) In July 2015, Plaintiff’s mother again reported a
11 decrease in Plaintiff’s headache frequency. Dr. Kim noted that Plaintiff’s behavior
12 was socially appropriate for her age, and she had good motor functioning and
13 language skills. (AR 306-10.)

14 In November 2015, Plaintiff’s mother reported that Plaintiff’s headaches had
15 increased to near-daily frequency despite her medication. Dr. Round diagnosed
16 Plaintiff with migraine headache without aura and ordered labwork. (AR 300-03.)
17 In December 2015, Plaintiff’s mother reported that Plaintiff had headaches most
18 days of the week and none of her medication seemed to abate the headaches. (AR
19 296.) Nonetheless, Dr. Round noted that Plaintiff played outside regularly,
20 watched TV or played video games daily, and was able to perform self-care such as
21 brushing her teeth. (AR 297.) Plaintiff’s labwork was unremarkable. (AR 298-
22 99.)

23 In January 2016, Plaintiff’s mother reported that despite her medication,
24 Plaintiff continued to have frequent headaches. (AR 335.) Dr. Kim diagnosed
25 Plaintiff with migraine without aura, not intractable, and without status
26 migrainosus. (AR 336.) He changed Plaintiff’s medication. (*Id.*)

27 In August 2016, Plaintiff reported that she had 11 to 13 headaches per month
28 and benefitted only slightly from her medication. Dr. Kim again diagnosed

1 Plaintiff with migraine without aura, not intractable, and without status
2 migrainosus. He changed Plaintiff's medication and recommended that Plaintiff
3 see a neurologist again. (AR 354-55.) Dr. Kim noted, "Mother also asked me to
4 fill the disability [*sic*] form as she being [*sic*] extremely disabled category. Mother
5 stated she can't do anything and [is] totally impaired during headaches, and
6 required the aid for total care during headaches. This is based on the verbal history
7 from mother." (AR 355.)

8 In September 2016, Plaintiff's mother reported that Plaintiff was having two
9 to three migraines per week. Plaintiff could not do anything while having
10 migraines, which significantly interfered with her school attendance. (AR 375,
11 378.) Dr. Round referred Plaintiff to a pediatric neurologist. (AR 378.) Plaintiff's
12 mother requested that Dr. Round complete a disability form. (*Id.*) Dr. Round told
13 Plaintiff's mother that it might be "difficult" because, *inter alia*, Plaintiff was
14 "well-functioning" when she was not having headaches. (*Id.*)

15 In December 2016, at Plaintiff's request, Dr. Round referred Plaintiff to an
16 acupuncturist and a chiropractor. (AR 373.) The record does not indicate that
17 Plaintiff received treatment from either practitioner. (*See general* AR 264-420.)

18 **d. LLU – December 2016 through April 2017.**

19 Plaintiff saw Dr. Gamil Fteeh in the pediatric neurology department at Loma
20 Linda University ("LLU") in December 2016. (AR 346.) Dr. Fteeh diagnosed
21 plaintiff with intractable migraine without aura and with status migrainosus. (AR
22 347.) He changed Plaintiff's medications, which again included prophylactic and
23 analgesic medications. (AR 346-47.) In April 2017, Dr. Fteeh diagnosed Plaintiff
24 with intractable migraine without aura and with status migrainosus. Dr. Fteeh
25 continued Plaintiff's medications and counseled Plaintiff regarding headache
26 management (*e.g.*, drinking plenty of fluids and maintaining a regular sleep
27 schedule). (AR 343-45.)

28 ///

1 **e. AVCC – July 2017 through November 2017**

2 In July 2017, Plaintiff’s mother reported that Plaintiff’s migraines had
3 decreased to 11 per month and she had no interim ER visits. (AR 365-69.) Dr.
4 Round advised Plaintiff’s mother against using opiates for pain control in minors.
5 (*Id.*) He encouraged Plaintiff’s mother that Plaintiff’s functionality seemed to be
6 improving with her current regimen. (*Id.*) In November 2017, Plaintiff’s mother
7 reported that Plaintiff’s medication seemed to be less effective and her headache
8 frequency had increased slightly. (AR 360.) Plaintiff reported no interim ER visits.
9 (*Id.*) Dr. Round noted that Plaintiff played outside regularly and watched TV or
10 played video games daily. (AR 361.)

11 In each visit to AVCC, CHLA, and LLU, Plaintiff’s findings on physical
12 examination were normal or unremarkable, including normal neurological,
13 musculoskeletal, and mental findings. (*See generally* AR 264-420.) Plaintiff never
14 presented with an ongoing migraine. (*See generally id.*)

15 **f. The opinions.**

16 In August 2016, Dr. Kim opined that Plaintiff had extreme limitations in each
17 of the six domains of functioning relevant to evaluating childhood disability. (AR
18 352-56.) With respect to each domain, Dr. Kim noted only, “Mother said she can’t
19 during migraine,” or some variant thereof. (AR 352-56.)

20 In September 2016, Dr. Round opined that Plaintiff had marked limitations in
21 the foregoing functioning domains. (AR 356-58.) Dr. Round noted that the
22 limitations occurred during migraine episodes. (*Id.*) With regard to health and
23 well-being, he stated, “[Plaintiff] complains of severe migraine headaches at least
24 two days per week. Between episodes, [Plaintiff] has no limitations in function or
25 self-care.” (AR 358.)

26 In February and May 2016, the state agency physicians opined that plaintiff
27 had “less than marked” limitations in health and well-being and no limitations in

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1 any other domain. (AR 53-54, 63.) The testifying expert opined that Plaintiff had
2 no limitations in any domain. (AR 40-41.)

3 **3. Analysis.**

4 **a. Unsupported by the record as a whole.**

5 After reviewing the medical record in detail (AR 20-22), the ALJ found that
6 Dr. Kim’s and Dr. Round’s opinions were “unsupported by the record as a
7 whole” (AR 22.) The ALJ reasoned, “[Plaintiff’s] objective examinations are
8 normal, she has only required conservative care, and she has experienced a
9 reduction in frequency of headaches and overall symptom improvement.” (*Id.*)
10 These grounds were specific and legitimate reasons for rejecting the treating
11 physicians’ opinions. An ALJ may reject a treating physician’s opinion on the
12 basis that it is unsupported by objective medical evidence. *See Bray v. Comm’r of*
13 *Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (explaining that ALJ can
14 reasonably discount treating physician’s opinion that is inadequately supported by
15 clinical findings) (citing *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002)).
16 As well, an ALJ may give less weight to a treating physician’s opinion on the
17 ground that it is inconsistent with the record as a whole. *See* 20 C.F.R. §
18 416.927(c)(4) (the more consistent an opinion is with the record as a whole, the
19 more weight it will be given).

20 Further, the ALJ supported his reasons with substantial evidence. As the
21 ALJ asserted (AR 20-21, 22), Plaintiff’s findings on examination were “routinely
22 normal over the longitudinal record,” and her laboratory testing and diagnostic
23 imaging – which included a brain CAT scan and a brain MRI – revealed normal
24 findings. Her migraine treatment consisted of non-opiate medications,
25 supplements, and headache management, which could reasonably be characterized
26 as conservative treatment. Moreover, as the ALJ emphasized (AR 21), Plaintiff
27 experienced a significant reduction in the frequency of her migraines in 2015, when
28 she was receiving regular neurology treatment at CHLA. Indeed, by May 2015, her

1 CHLA neurologist diagnosed her migraines as “episodic” and attributed them, in
2 part, to overuse of pain medication.

3 The ALJ acknowledged, albeit implicitly, that Plaintiff’s headaches increased
4 in frequency after her CHLA treatment ended. (See AR 21 (noting that Plaintiff
5 reported 11 to 19 headaches per month in December 2016).) But as the ALJ noted
6 (AR 21, 22), (1) Plaintiff did not have any ER visits for migraines after 2014;
7 (2) throughout her treatment, Dr. Round, Dr. Kim, and her CHLA neurologist(s)
8 characterized her headaches as not intractable and without migrainosus;⁵ and (3) in
9 July 2017, Dr. Round reported an increase in Plaintiff’s functionality. The Court
10 notes as well that after 2014, Plaintiff did not report multi-day headaches to her
11 treating physicians. Therefore, substantial evidence supported the ALJ’s
12 conclusion (AR 21) that overall, Plaintiff had a “positive response to the course of
13 treatment.”

14 In Plaintiff’s view, the ALJ erred because a “proper summary” of the medical
15 record would have demonstrated that Plaintiff “continued to experience severe,
16 intractable headaches throughout the disability period.” (JS at 3.) The ALJ
17 discussed the evidence at length (see AR 20-22) and came to a different conclusion.
18 “When the evidence before the ALJ is subject to more than one rational
19 interpretation, [the court] must defer to the ALJ’s conclusion.” *Batson v. Comm’r*
20 *of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).

21 **b. Inconsistent with treatment notes.**

22 The ALJ next found that Dr. Kim’s and Dr. Round’s opinions were not
23 consistent with contemporaneous treatment notes. (AR 28.) An ALJ may reject a

24
25 ⁵ The ALJ did not explicitly refute Dr. Fteeh’s 2017 diagnosis of Plaintiff’s
26 migraines as intractable and with migrainosus. (See AR 21.) Because the ALJ was
27 entitled to interpret conflicting diagnoses of equal weight, **Error! Main Document**
28 **Only.** see *Thomas*, 278 F.3d at 956-57, and because substantial evidence supported
his conclusion that Plaintiff’s migraines were not intractable and without
migrainosus, any error in failing to address Dr. Fteeh’s diagnosis was harmless.

1 treating physician’s opinion on such a basis. *See Valentine v. Comm’r of Soc. Sec.*
2 *Admin.*, 574 F.3d 685, 692-93 (9th Cir. 2009) (holding that conflict with treatment
3 notes is specific and legitimate reason to reject treating physician’s opinion);
4 *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014) (“A conflict between
5 treatment notes and a treating provider’s opinions may constitute an adequate
6 reason to discredit the opinions of a treating physician or another treating
7 provider”). As the ALJ noted (AR 20-21), in August 2016, Dr. Kim characterized
8 Plaintiff’s migraines as not intractable and without migrainosus. And in September
9 2016, Dr. Round expressed reservations regarding a disability evaluation, stating
10 that Plaintiff was “well-functioning” when she was not having migraines.

11 Therefore, it was not unreasonable for the ALJ to conclude that in assigning
12 Plaintiff “extreme” and “marked” limitations in all areas of functioning,
13 respectively, Dr. Kim and Dr. Round contradicted the contemporaneous treatment
14 notes. That is, their notes indicated that Plaintiff’s migraines were amenable to
15 treatment and were not disabling overall.⁶ *Compare* 20 C.F.R. § 416.926a(e)-(f).
16 The fact that Plaintiff interprets the physicians’ treatment notes differently (*see* JS
17 at 5) does not mean the ALJ’s interpretation of that evidence was irrational. *See*
18 *Batson, supra*.

19 **c. Inconsistent with Plaintiff’s reported activities.**

20 The ALJ next found that Dr. Kim’s and Dr. Round’s opinions were
21 inconsistent with Plaintiff’s reported daily activities, which “demonstrate
22 functioning consistent with a child her age.” (AR 22.) A conflict between a
23 treating physician’s opinion and the claimant’s daily activities “may justify
24 rejecting a treating provider’s opinion.” *Ghanim*, 763 F.3d at 1162 (citing *Morgan*
25 *v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600-02 (9th Cir. 1999) (considering

26
27 ⁶ In fact, Dr. Round’s opinion arguably hedges against a disability finding by
28 explicitly stating that between migraine episodes, Plaintiff had no limitations in
function or self-care.

1 inconsistency between treating physician’s opinion and claimant’s daily activities
2 as specific and legitimate reason to discount treating physician’s opinion)). The
3 ALJ cited Dr. Round’s reports that Plaintiff had been getting A’s in school,
4 regularly played outside and watched TV or played videogames, and engaged in
5 self-care. (AR 21; *see* AR 22.) The ALJ reasonably concluded the treating
6 physicians’ opinions conflicted with these reported activities, which indicated that
7 Plaintiff’s overall functioning was consistent with that of children her age. *See* 20
8 C.F.R. § 416.926a(f)(1).

9 **d. Based on subjective complaints.**

10 The ALJ discounted Dr. Kim’s and Dr. Round’s opinions on the ground that
11 they were based on “subjective complaints.” (AR 23.) An opinion of disability that
12 is “premised to a large extent upon the claimant’s own accounts of his symptoms
13 and limitations” may be disregarded where those complaints have been properly
14 discounted. *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989). It follows,
15 therefore, that an ALJ may disregard a physician’s opinion that is based largely on a
16 third party’s properly-discounted observations of the claimant’s symptoms and
17 limitations. Here, both Dr. Kim and Dr. Round explicitly noted, in their opinions
18 and their contemporaneous treatment notes, that their opinions were based on
19 Plaintiff’s mother’s reports. As the ALJ provided sufficient reasons for discounting
20 Plaintiff’s mother’s statements (*see* discussion, *infra*), he permissibly discounted
21 the treating physicians’ opinions on this ground as well.

22 In sum, the ALJ provided specific, legitimate reasons supported by
23 substantial evidence for discounting Dr. Kim’s and Dr. Round’s opinions.
24 Accordingly, Plaintiff is not entitled to relief on Issue One.

25 **B. Plaintiff’s Mother’s Statements (Issue Two).**

26 In Issue Two, Plaintiff contends that the ALJ did not provide clear and
27 convincing reasons to reject her mother’s testimony regarding her symptoms. (JS
28 at 13-16.)

1 **1. Legal Standard.**

2 The Social Security regulations provide that in determining disability in
3 children, the Administration may use statements from nonmedical sources
4 regarding “the effects of [the child’s] impairment(s) on [the child’s] activities and
5 how [the child] function[s] on a day-to-day basis.” 20 C.F.R. § 416.924a(2). Such
6 nonmedical sources may include parents and other caregivers. *Id.* at (2)(i). In turn,
7 the Ninth Circuit has repeatedly held that “[d]escriptions by friends and family
8 members in a position to observe a claimant’s symptoms and daily activities have
9 routinely been treated as competent evidence.” *Sprague v. Bowen*, 812 F.2d 1226,
10 1232 (9th Cir. 1987); *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir.1993) (ALJ
11 must consider lay testimony concerning claimant’s ability to work); *Stout v.*
12 *Commissioner, Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006) (same). This
13 principle applies equally to sworn hearing testimony of witnesses (*see Nguyen v.*
14 *Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996)) as well as to unsworn statements and
15 letters of friends and relatives (*see Schneider v. Commissioner of the Soc. Sec.*
16 *Admin.*, 223 F.3d 968, 974 (9th Cir. 2000)).

17 As a general rule, if the ALJ chooses to reject such evidence from other
18 sources, he may not do so without comment (*Nguyen*, 100 F.3d at 1467) and he
19 must provide “reasons that are germane to each witness” (*Dodrill*, 12 F.3d at 919;
20 *see also Smolen v. Chater*, 80 F.3d 1273, 1289 (9th Cir. 1996) (dismissing witness
21 testimony simply because witness is family member not sufficiently germane to
22 witness)). However, if the reviewing court can “confidently conclude that no
23 reasonable ALJ, when fully crediting the testimony, could have reached a different
24 disability determination,” the reviewing court may find the error harmless. *Stout*,
25 454 F.3d at 1056.

26 **2. Background.**

27 At the June 2018 hearing, Plaintiff’s mother testified as follows: Plaintiff
28 had ten to twenty headaches per month. (AR 44.) On average, she had a headache

1 every other day. (AR 45.) As she got older, she got more headaches. (AR 44.)
2 The headaches sometimes got better, but improvements only lasted two weeks.
3 (*Id.*)

4 Plaintiff could only take her medication three times a week. (AR 45.) If a
5 headache persisted, she had to go to her room. During a headache, she required
6 blackout curtains in her room and silence throughout the whole house. She vomited
7 and moaned. The headache could last anywhere from four hours to overnight. (AR
8 45-46.) After a headache, Plaintiff would be completely wiped out. (AR 46.) Her
9 “headache hangover” could last a whole day. (*Id.*)

10 Plaintiff had missed doctor appointments because she couldn’t travel when
11 she had a migraine. (AR 44.) In second grade, she was told she could no longer
12 attend school because of excessive absences, so she went to “home hospital school”
13 – *i.e.*, online learning at home. (AR 44-45.) When she was not sick with headache,
14 she was doing school work, even during school breaks and on weekends. (AR 45.)
15 She never had a chance to hang out with friends, because she had migraines all the
16 time. As well, she had no way of meeting people because she had hospital school.
17 (AR 46.)

18 In written statements, Plaintiff’s mother reported that Plaintiff had limitations
19 in the following areas: communication; physical abilities such as walking and
20 running; relationships with others; and taking care of her own needs. (AR 192-
21 200.) She reported that Plaintiff had a headache between 11 and 21 days per
22 month, with only ten days per month without headaches. (AR 213, 226.) The
23 headaches lasted from four hours to a couple of days. (*Id.*) During a headache,
24 Plaintiff suffered vomiting and loss of appetite, had to stay in a dark and silent
25 room, and could not dress herself, brush her teeth, or perform any function other
26 than lying down. (AR 215, 226.) Further, Plaintiff could not attend school because
27 of her migraines. (AR 226.) Plaintiff’s mother emphasized that the headaches were
28 “debilitating.” (*Id.*)

1 **3. Analysis.**

2 The ALJ found that Plaintiff’s mother’s statements “describe[d] limitations
3 that were greater than expected based on [Plaintiff’s] ongoing negative examination
4 findings, documented system improvement with the treatment course, and
5 [Plaintiff’s] reported daily activities that are consistent with a child her age.” (AR
6 23.) These reasons are germane to Plaintiff’s mother, in that they do not purport to
7 discount her testimony solely because she is a lay witness. Further, they are
8 supported by substantial evidence.

9 First, Plaintiff’s physical examination findings and other objective medical
10 evidence were consistently normal or unremarkable. *See* discussion, *supra*.
11 Second, the ALJ reasonably concluded, based on a review of the record, that
12 Plaintiff had a positive response to treatment overall.⁷ *See id.* Third, as discussed,
13 Plaintiff’s mother reported that Plaintiff was getting A’s in hospital school, and Dr.
14 Round reported that Plaintiff engaged in a variety of normal activities. These
15 reports are inconsistent with Plaintiff’s mother’s claims regarding the debilitating
16 effect of Plaintiff’s headaches. If Plaintiff averaged one severe headache every
17 other day (or more often) and had one “headache hangover” day per headache, she
18 would effectively be out of commission every day of the month. It was not
19 unreasonable for the ALJ to conclude that headaches of such claimed frequency and
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22 ⁷ While the Court cannot affirm the Commissioner’s decision on grounds upon
23 which the ALJ did not rely in reaching his decision, *Tommasetti v. Astrue*, 533 F.3d
24 1035, 1039 n.2 (9th Cir. 2008), the Court does not rely on a *post hoc* rationalization
25 where it merely cites additional record support for a stated ground for the ALJ’s
26 decision, **Error! Main Document Only.** *see Warre v. Commissioner*, 439 F.3d
27 1001, 1005 n.3 (9th Cir. 2006). In that regard, the Court notes that Plaintiff’s
28 mother’s claim that Plaintiff got more headaches as she got older is inconsistent
with her reports to Dr. Kim and Dr. Round, which indicated a decrease headache
frequency overall.

1 ///

2 severity were not consistent with getting A's in school and engaging in normal
3 childhood activities.⁸

4 In sum, the ALJ provided sufficient reasons for discounting Plaintiff's
5 mother's statements regarding Plaintiff's symptoms and limitations. Therefore,
6 Plaintiff is not entitled to relief on Issue Two.

7
8 **ORDER**

9 It is therefore ordered that Judgment be entered affirming the decision of the
10 Commissioner of Social Security and dismissing this action with prejudice.

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12 DATED: July 24, 2020

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15 _____
16 MARIA A. AUDERO
17 UNITED STATES MAGISTRATE JUDGE
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23 ⁸ As well, Plaintiff's mother's allegations regarding the overall disabling effect of
24 Plaintiff's migraines were inconsistent with her statements regarding Plaintiff's
25 functioning. As the ALJ noted in discussing the domains of functioning (AR 23-
26 27), despite claiming limitations in each functioning domain, Plaintiff's mother
27 reported that Plaintiff could engage in nearly every enumerated activity in the
28 Administration's "Function Report – Child Age 6 to 12." *E.g.*, she reported that
Plaintiff could read, add and subtract, print her name, complete homework and
chores, make friends, ride a bike, operate video game controls, tie her shoes, and
take a bath or shower without help. (AR 195-200.)