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| 8        | UNITED STATES I   | DISTRICT COURT           |  |
| 9        | CENTRAL DISTRICT OF CALIFORNIA  |                          |  |
| 10       |   |                          |  |
| 11       | LUZETTE M. R., <sup>1</sup>   | Case No. CV 19-07340-RAO |  |
| 12       | Plaintiff,  |                          |  |
| 13       | v.  | MEMORANDUM OPINION AND   |  |
| 14       | ANDREW M. SAUL, Commissioner of   | ORDER                    |  |
| 15       | Social Security,  |                          |  |
| 16       | Defendant.  |                          |  |
| 17       |   |                          |  |
| 18<br>19 | I. <u>INTRODUCTION</u>  |                          |  |
| 19<br>20 | Plaintiff Luzette M. R. ("Plaintiff") challenges the Commissioner's denial of   |                          |  |
| 20       | her application for a period of disability and disability insurance benefits ("DIB").   |                          |  |
| 21       | For the reasons stated below, the decision of the Commissioner is AFFIRMED.   |                          |  |
| 23       | II. <u>PROCEEDINGS BELOW</u>  |                          |  |
| 24       | On or about November 18, 2015, Plaintiff filed a Title II application for DIB   |                          |  |
| 25       | alleging disability beginning March 11, 2014. (Administrative Record ("AR") 171-  |                          |  |
| 26       | 72.) Her application was initially denied on April 27, 2016. (AR 93-97.) Plaintiff  |                          |  |
| 27       | <sup>1</sup> Partially redacted in compliance with Federal Rule of Civil Procedure $5.2(c)(2)(B)$                                       |                          |  |
| 28       | and the recommendation of the Committee on Court Administration and Case<br>Management of the Judicial Conference of the United States. |                          |  |
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filed a written request for a hearing, and a hearing was held on June 25, 2018. (AR 41-80, 101-02.) Represented by counsel, Plaintiff appeared and testified, along with 2 an impartial vocational expert. (AR 41-80.) On August 31, 2018, the Administrative 3 Law Judge ("ALJ") found that Plaintiff had not been under a disability, pursuant to 4 the Social Security Act, prior to August 11, 2017, but became disabled on that date 5 and has continued to be disabled through the date of the decision. (AR 27.) The 6 ALJ's decision became the Commissioner's final decision when the Appeals Council 7 denied Plaintiff's request for review. (AR 1-3.) Plaintiff filed this action on August 8 23, 2019. (Dkt. No. 1.) 9

The ALJ followed a five-step sequential evaluation process to assess whether 10 Plaintiff was disabled under the Social Security Act. See Lester v. Chater, 81 F.3d 11 821, 828 n.5 (9th Cir. 1995). At step one, the ALJ found that Plaintiff had not 12 engaged in substantial gainful activity since March 11, 2014, the alleged onset date 13 ("AOD"). (AR 18.) At step two, the ALJ found that since the AOD Plaintiff had 14 the following severe impairments: degenerative disc disease of the lumbar spine, 15 bilateral carpal tunnel syndrome, and rheumatoid arthritis in the wrists. (AR 19.) 16 The ALJ also found that since August 11, 2017, in addition to the severe impairments 17 identified above, Plaintiff has had rheumatoid arthritis in the shoulders, ankles, and 18 toes. (Id.) At step three, the ALJ found that Plaintiff "has not had an impairment or 19 combination of impairments that meets or medically equals the severity of one of the 20listed impairments in 20 CFR Part 404, Subpart P, Appendix 1." (AR 20.) 21

Before proceeding to step four, the ALJ found that prior to August 11, 2017, 22 Plaintiff had the residual functional capacity ("RFC") to "perform light work . . . 23 except occasional performance of postural activities, frequent handling and fingering 24 with the dominant right hand, occasional handling and fingering with the non-25 dominant left hand, and avoidance of concentrated exposure to extreme cold, 26 dangerous moving machinery, and unprotected heights." (AR 20.) 27

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Additionally, the ALJ found that beginning on August 11, 2017, Plaintiff had the RFC to "perform sedentary work . . . except occasional performance of postural activities, occasional handling and fingering with the dominant right hand, occasional handling and fingering with the non-dominant left hand, and avoidance of concentrated exposure to extreme cold, dangerous moving machinery, and unprotected heights." (AR 24.)

At step four, the ALJ found that, prior to August 11, 2017, Plaintiff was
capable of performing past relevant work as a master scheduler and as a material
analyst. (AR 25.) The ALJ also found that beginning on August 11, 2017, Plaintiff
has been unable to perform past relevant work. At step five, the ALJ found that since
August 11, 2017, there are no jobs that claimant could perform. (AR 26.)

Accordingly, the ALJ determined that, as to Plaintiff's claim for period of
disability and DIB, Plaintiff had not been under a disability prior to August 11, 2017.
(AR 27.)

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#### III. STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's 16 decision to deny benefits. A court must affirm an ALJ's findings of fact if they are 17 supported by substantial evidence and if the proper legal standards were applied. 18 Mayes v. Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001). "Substantial evidence . 19 . . is 'more than a mere scintilla[,]' . . . [which] means--and means only--'such 20 relevant evidence as a reasonable mind might accept as adequate to support a 21 conclusion."" Biestek v. Berryhill, -U.S. -, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d 22 504 (2019) (citations omitted); Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017). 23 An ALJ can satisfy the substantial evidence requirement "by setting out a detailed 24 and thorough summary of the facts and conflicting clinical evidence, stating his 25 interpretation thereof, and making findings." Reddick v. Chater, 157 F.3d 715, 725 26 (9th Cir. 1998) (citation omitted). 27

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"[T]he Commissioner's decision cannot be affirmed simply by isolating a 1 specific quantum of supporting evidence. Rather, a court must consider the record 2 as a whole, weighing both evidence that supports and evidence that detracts from the 3 Secretary's conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) 4 (citations and internal quotation marks omitted). "Where evidence is susceptible to 5 more than one rational interpretation,' the ALJ's decision should be upheld." Ryan 6 v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (citing Burch v. 7 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)); see Robbins v. Soc. Sec. Admin., 466 8 F.3d 880, 882 (9th Cir. 2006) ("If the evidence can support either affirming or 9 reversing the ALJ's conclusion, we may not substitute our judgment for that of the 10 ALJ."). The Court may review only "the reasons provided by the ALJ in the 11 disability determination and may not affirm the ALJ on a ground upon which he did 12 not rely." Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007) (citing Connett v. 13 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)). 14

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## IV. <u>DISCUSSION</u>

Plaintiff raises two issues for review: (1) whether the ALJ erred in assessing
Plaintiff's RFC; and (2) whether the ALJ erred in evaluating Plaintiff's credibility
and subjective symptoms. (*See* Joint Stipulation ("JS") 4.)<sup>2</sup> For the reasons below,
the Court affirms.

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## A. <u>The ALJ Did Not Err in Evaluating Plaintiff's Credibility and</u> <u>Subjective Symptom Testimony<sup>3</sup></u>

Plaintiff contends that "[t]here is no evidence of malingering and the ALJ failed to
provide specific, clear or convincing reasons for rejecting the Plaintiff's subjective
complaints." (JS 10; *See* JS 9-12, 16.) The Commissioner disagrees. (*See* JS 12-

 <sup>&</sup>lt;sup>2</sup> For ease of reference, the Court uses the page numbers automatically generated by the Court's electronic filing system in citing to the Joint Stipulation.

<sup>&</sup>lt;sup>3</sup> Because subjective symptom testimony is one factor that the ALJ must consider when assessing a claimant's RFC, the Court addresses the issue of credibility first before discussing the overall RFC determination.

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#### 1. Plaintiff's July 6, 2018 Testimony

Plaintiff has a Bachelor of Science in Criminal Justice Administration. (AR
51.) Plaintiff previously worked as a material analyst and as a planner. (AR 45-47.)
She explained that after a divisional lay off, she planned to go back to work, but had surgery on her right hand to address inflammation. (AR 50.) After the surgery
Plaintiff's rheumatoid arthritis flared up and she underwent therapy "for a long time." (AR 51.) Plaintiff reported wearing a splint on her hand and arm, and being unable to move her wrist. (*Id.*)

Plaintiff explained that she developed arthritis in her left hand and was unable
to work. (AR 50.) She also had carpal tunnel and received shots to help. (AR 5152.) She then developed arthritis in her wrist and fingers. (AR 52.) She described
experiencing pain and her wrists as being unbendable. (*Id.*) Plaintiff reported that
both of her hands are in a similar state, but she has not had surgery on her left hand.
(AR 52-53.) She underwent therapy in her right hand, but not for her left hand. (AR
53.) Plaintiff explained that therapy would not help with rheumatoid arthritis. (*Id.*)

Plaintiff reported that she last worked for an orthodontist. (AR 49.) Plaintiff 17 explained that after five or six weeks, she could not work anymore. (Id.) She 18 reported that the job required "a lot of sitting, standing, and waiting for the doctor to 19 get through with a patient, computer work, and . . . [she] had to talk to patients," and 20she got to the point where she was in pain. (Id.) Plaintiff's back would hurt from 21 sitting and her feet would swell all the time. (AR 49-50.) During this time, Plaintiff 22 was diagnosed with rheumatoid arthritis in her feet. (Id.) Because of the pain, 23 Plaintiff found it difficult to speak with people all day. (AR 50.) When she was 24 doing computer work, her hands would freeze up and her wrists would not move. 25 (AR 65.) She also reported feeling pain in her wrist, joints, and fingers. (AR 65-66.) 26

27 Plaintiff explained that she is prevented from working due to multiple
28 impairments, including rheumatoid arthritis in her shoulders, hands, and feet. (AR

54.) It is hard for Plaintiff to raise her arms over her head, or stretch. (Id.) The 1 rheumatoid arthritis in her feet worsened, making it difficult to walk. (Id.) She 2 reported having stiff and sore ankles, toes, and feet. (Id.) Plaintiff testified that 3 sitting for long periods of time and typing for long periods of time cause pain, 4 soreness, and stiffness in her wrists and hands. (AR 54-55.) Plaintiff explained that 5 her condition has progressed, and she has been prescribed medication. (AR 55.) The 6 medication prevents flare ups, but her knuckles are still stiff. (Id.) Additionally, 7 because of her lower back, she is unable to sit for long periods of time. (AR 54.) 8

9 Plaintiff reported that her arthritis has been progressing since 2015. (AR 56.)
10 Her doctors have prescribed different medications, but she reported being unable to
11 take most of them because arthritis medications are very strong and harsh on her
12 body. (*Id.*) Plaintiff explained that she was not interested in more aggressive
13 medication because of the side effects she experiences. (AR 69.) The medications
14 affect her liver. (*Id.*)

She explained that her right hand is "worse" since the surgery and she cannot
"really use" her right hand. (AR 60.) After the surgery, her arthritis started spreading
from her wrist into her hands. (AR 61.) Plaintiff's right-hand arthritis became worse
to the point where her "right hand kind of became . . . useless to [her] as far as . . .
being able to do work things." (*Id.*) For example, she is unable to use a computer
for long periods of time or focus without pain. (*Id.*)

As to her left hand, Plaintiff reported being diagnosed with carpal tunnel and experiencing numbness. (AR 62.) Plaintiff was provided with "a shot in the nerve to sooth the carpal tunnel." (*Id.*) Plaintiff reported that since the shot it has been "pretty good" and her hand does not go numb, but she does experience pain. (AR 62-63.)

Plaintiff also reported arthritis in her knees. (AR 66.) She explained that she
has back and foot pain. (*Id.*) Plaintiff received physical therapy for some time, but
stopped because she could not afford the co-insurance. (AR 66-67.)

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Plaintiff reported being unable to make a fist, grab and hold things, and cut things. (AR 55.) Plaintiff's husband cuts her steak and washes the dishes. (Id.) When Plaintiff washes dishes, she wears rubber gloves to help with her grip. (*Id.*) Plaintiff explained that she has difficulty opening doors. (AR 63.) She also cannot exercise or take her dog on a walk because of the issues with her feet. (Id.) Plaintiff 6 does not do housework. (Id.) She can do light dusting, but cannot use a vacuum because the back and forth movement strains her back. (Id.)

Plaintiff explained that she does not got to department stores and goes to the 9 grocery store infrequently. (AR 64.) Plaintiff has also had to stop bowling. (Id.) 10 She is unable to sew or do needlework. (AR 64-65.) 11

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#### **Plaintiff's Exertion Questionnaire**<sup>4</sup> 2.

Plaintiff lives in a house with her spouse. (AR 227.) She can climb one flight 13 of stairs with no negative affect. (AR 228.) She can lift anything under five pounds 14 "a few times per day." (Id.) She is able to do her own grocery shopping once per 15 week. (Id.) She does not clean her own home or living area. (Id.) Plaintiff can drive 16 an automatic car for twenty miles. (Id.) Plaintiff experiences pain and cramps in her 17 hands and lower back pain and stiffness when she drives more than twenty miles. 18 (Id.) She does not work on cars or do yard work. (Id.) Plaintiff used to do pruning, 19 trimming, and planting, but is no longer able to because of pain and stiffness in her 20 hands and back. (Id.) Plaintiff reported that she did chores before she became 21 disabled. Plaintiff expressed experiencing difficulty finishing her (AR 229.) 22 housework and chores. (Id.) 23

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during the day for ten or fifteen minutes to relieve her back pain. (Id.) She reported

Plaintiff sleeps between five and six hours. (AR 229.) She rests multiple times

<sup>&</sup>lt;sup>4</sup> Plaintiff's questionnaire is undated and unsigned. (See AR 227-29.) Additionally, 27 Plaintiff references an attachment, but there is no attachment to the questionnaire in 28 the record. (See id.)

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taking two aspirin twice per day. (Id.)

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#### 3. Applicable Legal Standards

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

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#### 4. Discussion

"After careful consideration of the evidence," the ALJ found that Plaintiff's
"medically determinable impairments could reasonably be expected to cause the
alleged symptoms," but found that Plaintiff's "statements concerning the intensity,
persistence, and limiting effects of these symptoms are not fully supported prior to
August 11, 2017." (AR 22.)

The Commissioner notes that the "primary reason the ALJ did not credit Plaintiff's statements is that the ALJ found inconsistencies with Plaintiff's allegations and the medical record." (JS 12.) The Commissioner argues that the ALJ also "noted inconsistencies in Plaintiff's pain complaints, inconsistencies with regard to Plaintiff's allegations of when she stopped work, and inconsistencies with regard to Plaintiff's activities." (JS 12-13.) While the ALJ did summarize Plaintiff's

testimony regarding her daily activities and discussed Plaintiff's previous 1 employment extensively during the hearing, the ALJ did not articulate these as 2 reasons for discounting Plaintiff's testimony, and the Court cannot affirm on a ground 3 on which the ALJ did not rely. Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 4 1225-26 (9th Cir. 2009) ("Long-standing principles of administrative law require us 5 to review the ALJ's decision based on the reasoning and factual findings offered by 6 the ALJ—not post hoc rationalizations that attempt to intuit what the adjudicator may 7 have been thinking."). 8

9 The Court's review of the record reveals that, in discounting Plaintiff's 10 testimony, the ALJ relied on (1) inconsistencies between Plaintiff's statements and 11 the objective medical evidence; and (2) the lack of supporting objective medical 12 evidence. (AR 21-24.) No malingering allegation was made, and therefore, the 13 ALJ's reasons must be "clear and convincing."

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# a. Reason No. 1: Inconsistencies Between Plaintiff's Statements and the Objective Medical Evidence

The ALJ found that Plaintiff's statements about the alleged intensity, 16 persistence, and limiting effects of symptoms were inconsistent with the objective 17 medical evidence prior to August 11, 2017. (AR 21; see AR 21-22.) Specifically, as 18 to Plaintiff's claims that pain and stiffness in her lower back affected her ability to 19 sit or stand, or drive for more than 20 minutes, the ALJ found that the degenerative 20disc disease of the lumbar spine "does not support the limitations to the extent 21 alleged." (AR 21). The ALJ reasoned that while Plaintiff had a "positive straight leg 22 raise on her right leg, loss to pinprick sensation at L5 bilaterally, and weakness to 23 dorsiflexion of the great to bilaterally, her gait remained intact and she was capable 24 of standing on [her] toes and walking on [her] heels without difficulty." (Id., citing 25 AR 338, 376-77, 411.) However, contrary to the ALJ's summary, the Court's review 26

of the records shows that Plaintiff was able to walk on her heels *with* difficulty.<sup>5</sup> (*See* AR 376-77.) Additionally, the ALJ pointed to documented improvement of range of motion, strength, and flexibility. (AR 21.)

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As to Plaintiff's claims that she was unable to make a fist, grab objects, or 4 maintain a grasp on objects because of bilateral hand and wrist pain, the ALJ found 5 that after Plaintiff's right wrist extensor tenosynovitis in March 2014, the record 6 shows Plaintiff experienced "marked improvement." (AR 21.) In support the ALJ 7 cites to a July 2014 treatment note where Plaintiff complained of right wrist pain, but 8 her physician documented that Plaintiff's wrist showed "marked improvement" and 9 Plaintiff reported it was "a little better." (AR 273.) The ALJ also notes that despite 10 having moderate to severe carpal tunnel syndrome on her left hand and moderate 11 carpal tunnel syndrome on her right hand, Plaintiff's bilateral wrist was "no more 12 than mild to moderate severity." (AR 21, citing AR 262-310.) Plaintiff also had 13 "essentially normal range of motion of both wrists and both hands" and normal 14 strength in both hands. (AR 22, citing AR 289, 300, 304, 306-08.) The ALJ did note 15 that Plaintiff had decreased range of motion and limited strength in her left finger, 16 and decreased left hand pinch strength, but reasoned that these abnormal findings did 17 not suggest Plaintiff did not have the ability to make a fist, grab objects, or maintain 18 grasp. (AR 21.) 19

As to Plaintiff's allegation that pain and stiffness in her shoulders affects her ability to reach in all directions, the ALJ noted that before April 2016, the records show that Plaintiff showed good range of motion and there was no evidence of

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<sup>&</sup>lt;sup>5</sup> The Court finds that the ALJ's error in finding Plaintiff was able to walk on heels
without difficulty was harmless. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050,
1055 (9th Cir. 2006) (finding an error is harmless if it is "inconsequential to the ultimate nondisability determination"). Here, the ALJ offered other evidence
contradicting Plaintiff's claims regarding her back. The ALJ explained that
Plaintiff's gait remained intact, she was able to stand on her toes, and her range of motion, strength and flexibility had improved. (*See* AR 21.)

synovitis or impingement. (AR 22, citing AR 323-53, 387-432.) Additionally, the ///

ALJ pointed to a September 2016 treatment note where Plaintiff reported that her 3 right shoulder was better. (AR 22; see AR 393.) 4

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Similarly, the ALJ found Plaintiff's claim that she was significantly limited in her ability to walk due to the pain and stiffness of her ankles and toes was inconsistent 6 with treatment notes prior to August 2017. (AR 22.) The ALJ reasoned that Plaintiff's ankles and toes did not have synovitis, she had an intact gait, and was able to stand on her toes and walk on her heels without difficulty. (Id., citing AR 323-53, 376, 387-432.) As discussed above the record shows that Plaintiff had difficulty 10 walking on her heels. (See AR 376.)

Finally, the ALJ reasoned that Plaintiff attempted to minimize her daily 12 activities. (AR 22.) For example, the ALJ noted that while Plaintiff stated that she 13 is unable to exercise or take her dog for a walk, Plaintiff reported walking and using 14 a treadmill for exercise. (AR 22, citing AR 397.) 15

Plaintiff contends that the ALJ used boilerplate language to diminish her 16 complaints and failed to identify evidence that contradicts or diminished those 17 complaints. (JS 10, 12.) Additionally, Plaintiff argues that the ALJ failed to identify 18 contradictory evidence related to Plaintiff's right upper extremity. (JS 16.) Plaintiff 19 maintains that her statements are consistent with the evidence. (Id.) 20

Here, the ALJ identified specific medical records which contradicted 21 Plaintiff's subjective allegations. (See AR 21-22.) While Plaintiff alleges that the 22 ALJ did not identify contradictory evidence related to Plaintiff's right upper 23 extremity (JS 16), the ALJ relied on Plaintiff's self-reported improvement of her right 24 shoulder (AR 23). (See AR 393.) "Contradiction with the medical record is a 25 sufficient basis for rejecting the claimant's subjective testimony." Carmickle v. 26 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 2008) (citing Johnson v. 27 Shalala, 60 F.3d 1428, 1434 (9th Cir.1995); see Parra v. Astrue, 481 F.3d 742, 750 28

(9th Cir. 2007) (finding inconsistencies between claimant's testimony and medical record is a proper ground to discredit claimant's testimony); see also Molina v. 2 Astrue, 674 F.3d 1104, 1113 (9th Cir. 2012) (holding that ALJ properly found 3 claimant was not credible where claimant's allegations were inconsistent with other 4 medical evidence in the record). 5

Accordingly, the ALJ's finding that Plaintiff's statements were not consistent 6 with the medical record constitutes a specific, clear and convincing reason for 7 discounting Plaintiff's subjective symptom testimony. 8

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b. Reason No. 2: Lack of Supporting Objective Medical Evidence The lack of supporting objective medical evidence cannot form the sole basis for discounting testimony, but it is a factor that the ALJ may consider in making a credibility determination. Burch, 400 F.3d at 681; Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)).

Plaintiff contends that her statements are supported by the objective evidence. 14 Plaintiff argues that the ALJ ignored "the findings from physical (JS 16.) 15 examinations noted by the Plaintiff's orthopedist and rheumatologist." (JS 10.) 16 Additionally, Plaintiff cites to evidence in the record which she contends supports a 17 finding of disability prior to August 11, 2017. (See JS 10-11.) 18

The ALJ found that the positive objective and clinical diagnostic findings since 19 the AOD did not support a more restrictive RFC. (AR 23.) The ALJ reasoned that 20the medical evidence regarding Plaintiff's bilateral carpal tunnel syndrome, 21 rheumatoid arthritis in the wrists, and degenerative disc disease of the lumbar spine 22 supported the assessed RFC. (*Id.*) 23

Specifically, the ALJ reasoned that, while the evidence showed that Plaintiff 24 experienced bilateral wrist and hand pain from carpal tunnel and rheumatoid arthritis, 25 "the objective findings of [Plaintiff's] hands and wrists since the [AOD] do not 26 support greater lifting, carrying, handling, or fingering limitations." (AR 23.) On 27 her AOD, Plaintiff underwent surgery on her right wrist for extensor tenosynovitis. 28

(Id., citing AR 309; see AR 171-72.) In April 2014, Plaintiff presented with left hand 1 numbness. (AR 266.) A physical examination showed there was no edema and 2 Plaintiff's left wrist had normal strength. (AR 23, citing AR 267-68, 271-72.) 3 However, the ALJ noted that Plaintiff's Phalen's test, median nerve compression test, 4 and Tinel's sign were positive, suggesting carpal tunnel syndrome. (Id.) On May 9, 5 2014, diagnostic testing confirmed that Plaintiff had severe left carpal tunnel 6 syndrome and moderate right carpal tunnel syndrome. (AR 23, citing AR 306-08.) 7 On July 10, 2014, Plaintiff reported right wrist pain, but her physician noted that there 8 was "marked improvement." (AR 273.) The ALJ noted that Plaintiff still had "some 9 limited range of motion and strength of her right wrist." (AR 23, citing AR 273, 10 275.) Additionally, the ALJ noted that the records showed a change in the character 11 of Plaintiff's right wrist pain. (AR 23, citing AR 279.) In September 2014, Plaintiff's 12 left carpal tunnel syndrome was noted to be worsening, but Plaintiff had a normal 13 range of motion, no deformity or edema, and normal left upper extremity strength. 14 (AR 23, citing AR 281.) Plaintiff showed decreased left pinch strength in January 15 2015. (AR 23, citing AR 289.) Plaintiff's right wrist pain remained stable until April 16 2015 when inflammatory arthritis began affecting her right hand. (AR 23, citing AR 17 287, 293.) However, the ALJ also pointed to a September 2015 treatment note 18 documenting that her right wrist pain was stable and occasionally mild, and her left 19 wrist pain had a mild severity level. (AR 23, citing AR 294.) The ALJ noted that by 20October 2015 Plaintiff's bilateral carpal tunnel syndrome had slightly improved, but 21 Plaintiff had rheumatoid arthritis symptoms. (AR 23, citing AR 301.) 22

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Similarly, the ALJ found that the objective findings did not support Plaintiff's claims of significant limitation to her ability to sit, stand, or walk. (AR 24; see AR 23-24.) The ALJ noted that on December 29, 2014, a lumbar spine magnetic resonance imaging scan showed Plaintiff had disc herniation at L3-L4, L4-L5, and 26 L5-S1 (AR 312, 318-19), and a physical examination showed Plaintiff had a positive 27 straight right leg raise, bilateral loss of pinprick sensation at L5 and bilateral 28

weakness to dorsiflexion of her great toe (AR 376-77). (AR 23.) Nevertheless, the ALJ relied on Plaintiff's ability to stand on her toes and walk on her heels without difficulty.<sup>6</sup> (Id., citing AR 376.) The ALJ also relied on Plaintiff's improved range of motion, strength, and flexibility with physical therapy. (AR 23, citing AR 312.) The ALJ noted that Plaintiff continued to report pain and presented reduced range of motion (AR 312), but the ALJ relied on the fact that Plaintiff had intact sensation and 6 symmetric reflexes (AR 373). (AR 24.)

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Plaintiff contends that the ALJ "ignored" the findings from her orthopedist and 8 rheumatologist. (JS 10-11.) Plaintiff cites to multiple treatment records from her 9 physicians. (JS 10-11.) However, an ALJ is "not required to discuss every piece of 10 evidence" in making a disability determination. Hiler v. Astrue, 687 F.3d 1208, 1212 11 (9th Cir. 2012) (quoting Howard v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003)). 12 Notably, the ALJ did discuss some of the treatment records that Plaintiff contends 13 the ALJ ignored, (see AR 22-23; see also JS 11, citing AR 376-77), which suggests 14 that the ALJ reviewed the record in its entirety and made a decision based upon 15 consideration of all the evidence. Additionally, Plaintiff has not shown that the 16 evidence she cites is significant or probative. See Howard, 341 F.3d at 1012 ("ALJ 17 is not required to discuss evidence that is neither significant nor probative"). 18

The Court finds that the ALJ thoroughly considered Plaintiff's medical records 19 (see AR 20-24) and found that the objective medical evidence did not support 20 Plaintiff's allegations of disabling symptoms and limitations (see AR 24). See 21 *Reddick*, 157 F.3d at 725. Throughout the decision the ALJ relies on medical records 22 documenting normal examination results, which the ALJ was allowed to rely on in 23 assessing Plaintiff's testimony. See Garza v. Astrue, 380 F. App'x 672, 674 (9th Cir. 24 2010) (finding that an ALJ properly considered a claimant's normal exam findings 25

<sup>26</sup> <sup>6</sup> The Court finds that the ALJ's erroneous summary of Plaintiff's ability to walk on her heel is harmless, because the ALJ offered other evidence to support the finding 27 that there is a lack of objective evidence to support Plaintiff's claims. See Stout, 454 28 F.3d at 1055.

when noting a lack of objective medical evidence to support the claimant's allegations); *see also Margolis v. Berryhill*, No. CV 17-5047 SS, 2018 WL 3129775, at \*10 (C.D. Cal. June 22, 2018) (holding that ALJ may rely on normal and unremarkable examinations in discounting a claimant's subjective testimony).

Additionally, the ALJ was allowed to rely on examination notes and reports 5 showing Plaintiff's improved condition. See De Herrera v. Astrue, 372 F. App'x 6 771, 774 (9th Cir. 2010) (finding that an ALJ properly considered a claimant's 7 improved condition with treatment in discounting a claimant's complaints of 8 debilitating pain); Huntsman v. Colvin, No. EDCV 13-1300 JC, 2014 WL 808020, at 9 \*9 (C.D. Cal. Feb. 28, 2014) (holding that ALJ may rely on medical records reflecting 10 improvement over time and refusing to "second guess the ALJ's reasonable 11 interpretation of this medical evidence which is supported by substantial evidence in 12 the record."). 13

While there may be other evidence in the records which document Plaintiff's 14 medical problems, the ALJ was allowed to weigh the multiple normal examination 15 results and documented improvement in evaluating Plaintiff's testimony. Where, as 16 here, the evidence might be susceptible to more than one rational interpretation, the 17 ALJ's decision should be upheld. See Ryan, 528 F.3d at 1198 (citing Burch, 400 18 F.3d at 679); see Robbins, 466 F.3d at 882 ("If the evidence can support either 19 affirming or reversing the ALJ's conclusion, we may not substitute our judgment for 20that of the ALJ."). 21

Accordingly, the ALJ's finding that Plaintiff's statements are not supported by the objective medical evidence constitutes a specific, clear and convincing reason for discounting Plaintiff's subjective symptom testimony.

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#### 5. Conclusion

The Court finds that the ALJ gave specific and clear and convincing reasons for discounting Plaintiff's subjective symptom testimony. *See Stobie v. Berryhill*, 690 F. App'x 910, 911 (9th Cir. 2017) (finding ALJ properly rejected claimant's

testimony where ALJ found there was insufficient objective medical evidence to ///

establish disability and claimant's testimony conflicted with the objective medical evidence). As such, the ALJ properly evaluated Plaintiff's subjective complaints.

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## B. <u>The ALJ Did Not Err in Assessing Plaintiff's RFC</u>

The ALJ is responsible for assessing a claimant's RFC "based on all of the 6 relevant medical and other evidence." 20 C.F.R. § 404.1545(a)(3), 404.1546(c); see 7 *Robbins*, 466 F.3d at 883 (citing SSR 96-8p, 1996 WL 374184, at \*5 (July 2, 1996)). 8 In doing so, the ALJ may consider any statements provided by medical sources, 9 including statements that are not based on formal medical examinations. See 20 10 C.F.R. § 404.1513(a), 404.1545(a)(3). An ALJ's determination of a claimant's RFC 11 must be affirmed "if the ALJ applied the proper legal standard and his decision is 12 supported by substantial evidence." Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th 13 Cir. 2005); accord Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th 14 Cir. 1999). 15

In determining Plaintiff's RFC, the ALJ "considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence . . . [and] also considered opinion evidence" in accordance with social security regulations. (AR 20.)

Plaintiff contends that the evidence supports greater limitations related to her 20 right hand prior to August 11, 2017. (JS 5; see JS 4-6.) Plaintiff cites to treatment 21 notes documenting Plaintiff's rheumatoid arthritis, inflammatory polyarthritis, and 22 carpal tunnel syndrome. (See JS 4-6.) Plaintiff cites to treatment notes documenting 23 tenderness, weakness, and swelling. (JS 5, citing AR 265, 270, 272-79, 283, 285, 24 292, 391, 393, 395-99.) Plaintiff argues that the ALJ "could only identify one 25 medical note from July 10, 2014, in which her doctor noted that she had marked 26 improvement," but ignored the rest of the note which stated that Plaintiff's pain was 27 aggravated by bending, lifting, and movement. (JS 6.) Plaintiff contends that the 28

ALJ cherry-picked portions of the record. (JS 9.)

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"While the ALJ has the primary responsibility for sorting through the medical 3 evidence and assessing its weight, that does not allow an ALJ to ignore-or 'cherry-4 pick'-evidence to support a determination." Gurtner v. Colvin, No. ED CV 15-156 5 MRW, 2015 WL 5267061, at \*4 (C.D. Cal. Sept. 9, 2015); see Ghanim v. Colvin, 6 763 F.3d 1154, 1164 (9th Cir. 2014) ("treatment records must be viewed in light of 7 the overall diagnostic record"). As discussed above in connection with Plaintiff's 8 subjective complaints, the ALJ thoroughly reviewed the medical records presented 9 by Plaintiff. While Plaintiff points to some evidence that the ALJ did not discuss, 10 the ALJ was not required to discuss every piece of evidence. See Hiler, 687 F.3d at 11 1212 (holding ALJ is "not required to discuss every piece of evidence"); Lusardi v. 12 Astrue, 350 F. App'x 169, 173 (9th Cir. 2009). In discussing Plaintiff's 13 improvement, the ALJ did not solely rely on one treatment note, but also cited to an 14 October 2015 treatment note documenting slight improvement in Plaintiff's bilateral 15 carpal tunnel syndrome. (AR 23; see AR 301.) While the note also documents that 16 Plaintiff's pain was aggravated by bending, lifting, and movement, it describes no 17 functional limitations and does not contradict the ALJ's RFC assessment of frequent 18 handling and fingering with her right hand. See Howard, 341 F.3d at 1012 ("ALJ is 19 not required to discuss evidence that is neither significant nor probative"). 20Additionally, where the evidence is susceptible to more than one rational 21 interpretation, the ALJ's decision must be upheld. See Ryan, 528 F.3d at 1198. 22

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Second, Plaintiff contends that the ALJ "arbitrarily selected August 11, 2017

as the date . . . Plaintiff became disabled" and did not "provide a reasonable

explanation why Plaintiff has greater restrictions to her right dominant hand." (JS 4,

6.) Plaintiff fails to cite to any case law or statutory authorities in support of her

arguments.<sup>7</sup> The Commissioner contends that the "ALJ made a reasonable inference 1 that Plaintiff's condition worsened in August 2017." (JS 7.) The Commissioner 2 argues that in compliance with the social security regulations,<sup>8</sup> "the ALJ referenced 3 both the 'longitudinal history and treatment course . . . and any statements by the 4 claimant about new or worsening signs." (JS 8.) While the Commissioner argues 5 that the ALJ was not required to call a medical advisor to determine the disability 6 onset date (see JS 7), Plaintiff does not contend that the ALJ was required to call a 7 medical expert (see JS 4-6, 9). 8

"The requirement that, in all but the most plain cases, a medical advisor be 9 consulted prior to inferring an onset date is merely a variation on the most pervasive 10 theme in administrative law—that substantial evidence support an agency's 11 decisions." Wellington v. Berryhill, 878 F.3d 867, 874 (9th Cir. 2017) (quoting 12 Bailey v. Chater, 68 F.3d 75, 80 (4th Cir. 1995)). Here, in finding that Plaintiff had 13 greater limitations beginning August 11, 2017, the ALJ relied on an August 11, 2017 14 progress note documenting that Plaintiff's condition was "significantly worse" and 15 the disease had spread to Plaintiff's ankles and toes. (AR 24, citing AR 391.) The 16

<sup>18</sup> <sup>7</sup> The Court reviews "only issues which are argued specifically and distinctly." Greenwood v. F.A.A., 28 F.3d 971, 977 (9th Cir. 1994); see United States v. Graf, 19 610 F.3d 1148, 1166 (9th Cir. 2010) ("Arguments made in passing and not supported 20 by citations to the record or to case authority are generally deemed waived"); *Townsend v. Monster Beverage Corp.*, 303 F. Supp. 3d 1010, 1036 (C.D. Cal. 2018) 21 ("The Court's role is not to make or develop arguments on behalf of the parties, and 22 ... failure to present cogent arguments is enough to deny these objections"). While Plaintiff must make her own arguments for reversal, the Court has a duty to undergo 23 a "full review of the facts" and make "an independent determination as to whether 24 the [ALJ's] findings are supported by substantial evidence." Stone v. Heckler, 761 F.2d 530, 532 (9th Cir. 1985.). Thus, the Court reviews whether the ALJ properly 25 determined Plaintiff's disability onset date.

<sup>&</sup>lt;sup>26</sup> <sup>8</sup> The Commissioner relies on SSR 18-1p. (*See* JS 7-8.) However, SSR 18-1p is applicable to applications filed on or after October 2, 2018. *See* SSR 18-1p, 83 Fed. Reg. 191 p. 49613. This case would instead be governed by SSR 83-20, 1983 WL 31249 (Jan. 1, 1983).

| 1  | ALJ reasoned that "the progression of [Plaintiff's] rheumatoid arthritis of the wrists     |  |  |
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| 2  | and fingers supports additional manipulative limitations." (AR 24.) The ALJ also           |  |  |
| 3  | noted progression of Plaintiff's rheumatoid arthritis to her ankles and toes. (Id., citing |  |  |
| 4  | AR 391, 399.) Additionally, the ALJ pointed to a physical examination documenting          |  |  |
| 5  | bilateral tender synovitis in Plaintiff's ankles, bilateral metatarsophalangeal joint      |  |  |
| 6  | boggy and tender synovitis in her toes, and a limited gait secondary to ankle and          |  |  |
| 7  | metatarsophalangeal joint pain. (AR 24, citing AR 387, 389, 391, 480.) The ALJ             |  |  |
| 8  | also pointed to records documenting Plaintiff's ability to stand and walk as being         |  |  |
| 9  | "quite limited." (AR 24, citing AR 392.) The Court finds that the ALJ's finding that       |  |  |
| 10 | Plaintiff's right hand had greater functional limitations beginning August 11, 2017,       |  |  |
| 11 | is supported by substantial evidence. <i>See Lopez v. Astrue</i> , No. 1:08-CV-01542-SMS,  |  |  |
| 12 | 2010 WL 1328888, at *13 (E.D. Cal. Apr. 2, 2010) (finding ALJ did not arbitrarily          |  |  |
| 13 | select an onset date where the ALJ "reviewed the medical evidence as a whole and           |  |  |
| 14 | determined the consistency of the various expert opinions with the overall record").       |  |  |
| 15 | Accordingly, the Court finds that the ALJ did not err in assessing Plaintiff's RFC.        |  |  |
| 16 | V. <u>CONCLUSION</u>   |  |  |
| 17 | IT IS ORDERED that Judgment shall be entered AFFIRMING the decision of                     |  |  |
| 18 | the Commissioner denying benefits.   |  |  |
| 19 | IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this                     |  |  |
| 20 | Order and the Judgment on counsel for both parties.  |  |  |
| 21 | Rozella a. OC  |  |  |
| 22 | DATED: July 10, 2020 ROZELLA A. OLIVER   |  |  |
| 23 | UNITED STATES MAGISTRATE JUDGE   |  |  |
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| 26 | NOTICE   |  |  |
| 27 | THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,                                  |  |  |
| 28 | LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.  |  |  |
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