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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOMINIQUE M. BELTON,)	Case No.: ED CV 16-02165-JDE
)	
Plaintiff,)	MEMORANDUM OPINION
v.)	AND ORDER
)	
NANCY A. BERRYHILL,)	
Acting Commissioner of Soc. Sec.,)	
)	
Defendant.)	
_____)	

I.

INTRODUCTION

Plaintiff Dominique M. Belton filed a Complaint on October 13, 2016 seeking review of the Commissioner’s denial of her application for Title XVI Supplemental Security Income (“SSI”) benefits. (Dkt. No. 1; see also AR 11.) Defendant filed an Answer to Plaintiff’s Complaint on February 27, 2017. (Dkt. No. 15.) All parties have consented to proceed, pursuant to 28 U.S.C. § 636(c), before the undersigned United States Magistrate Judge for all further proceedings, including entry of Judgment. (See Dkt. Nos. 11, 12, 13.) On May 12, 2017, the

1 parties filed a “Joint Submission” (Dkt. No. 21); and on May 22, 2017, the parties
2 filed an “Amended Joint Submission” (Dkt. No. 22); and this Court construes the
3 Amended Joint Submission to be the current pleading of record and to supersede
4 the earlier-filed Joint Submission.¹

5 II.

6 BACKGROUND

7 A. Administrative Proceedings

8 On April 30, 2013, Plaintiff filed her application for SSI benefits, alleging a
9 disability onset date of May 10, 2011. (AR 11, 30.) Plaintiff claims that she cannot
10 work due to bipolar disorder, schizophrenia, depression, stress, anxiety, and
11 hallucinations. (See AR 16, 205.) Plaintiff alleges that she has not worked since
12 April 30, 2013, the date of her application. (See AR 13.)

13 Plaintiff was born on March 20, 1985, and at the time she filed her benefits
14 application she was 28 years old, a “younger individual” for disability purposes.
15 (See AR 21, 36, 165.) She is 5’ 6” tall and weighs 210 pounds, which qualifies as
16 obese for Social Security purposes. (See AR 13.) She is a high school graduate and
17 is able to communicate in English. (See AR 21, 36.) Plaintiff lives in an apartment
18 with her mother and brother. (See AR 14, 47-48, 350.) Plaintiff has two older
19 children who were apparently taken from her custody and placed in foster care.
20 (See AR 32, 54.) Plaintiff also became pregnant in 2014, and had a baby son who
21 was born on October 16, 2014. (See AR 17, 41, 54.) Plaintiff was incarcerated
22 from early 2012 until April 2013. (See AR 46, 50.)

23
24 ¹ Defendant explains that due to word processing compatibility problems, the pages of
25 the Amended Joint Submission contain separate submissions from Plaintiff and
26 Defendant, but the separate submissions are not consecutively numbered. Accordingly,
27 the Court will refer to Plaintiff’s submission as “Pl.’s Am. J. Subm.” and to Defendant’s
28 submission as “Def.’s Am. J. Subm.,” and refer to the page numbers assigned by the
parties to their separate submissions.

1 Plaintiff previously worked for short periods as a sales attendant at a retail
2 “Navy Exchange” outlet, and as a food delivery driver for Pizza Hut, both
3 unskilled positions. (See AR 20-21, 36-38, 56.)

4 Plaintiff has been diagnosed with a variety of mental disorders, including
5 major depression with psychotic features, anxiety disorder, and polysubstance
6 abuse. (See AR 18, citing Exh. 1F [AR 290-303] and Exh. 6F at 8 [AR 347].) In
7 April 2012, while Plaintiff was incarcerated, Plaintiff was sent to an outside
8 hospital because of mental symptoms and suicidal ideations. (See AR 18, 51-54.)
9 The record also reflects that Plaintiff has been treated for hypothyroidism and
10 diabetes. (See AR 13, citing Exh. 2F at 7, Exh. 7F at 4.)

11 On December 4, 2014, Plaintiff and a vocational expert (“VE”) testified at a
12 hearing before an Administrative Law Judge (“ALJ”). (See AR 27-66; see also AR
13 11.) Plaintiff testified that, while she had been taking medications for her mental
14 conditions, she stopped when she became pregnant in February 2014, but re-
15 started again in October 2014 after her baby son was born. (See AR 40-42.)
16 Plaintiff testified that she took Zoloft, Abilify, Haldol, Wellbutrin, Prazosin,
17 Metformin for diabetes, and thyroid medication. (AR 42-43.) She denied side
18 effects from the medications, but said she has “drowsiness and . . . a little bit of
19 weight gain.” (AR 43.)

20 Plaintiff testified that she has a learning disability, and can only read at a 5th
21 grade level. (AR 43-44.) However, Plaintiff testified that she uses a computer at a
22 library. (AR 44.) Plaintiff testified that she can do cleaning around the house
23 “when it’s once I’m not like depressed.” (AR 48.) She acknowledged that she is
24 able to go the store, but her brother walks with her and she does not go alone. (AR
25 48-49.) Plaintiff testified that she takes care of her infant son, “but sometimes my
26 Mom has to take him away from me because I get so stressed out.” (AR 54.)

27 Plaintiff testified she doesn’t think she could handle a repetitive 9 to 5 job
28 because “I’d probably get so stressed out that I probably won’t go in no more.”

1 (AR 51.) However, Plaintiff did think she was smart enough and had the physical
2 ability to perform a simple job like “put[ting] . . . paper cups in bags,” but she
3 thought her performance would be slowed down “because of what’s going on in
4 [her] head.” (AR 52.)

5 The ALJ gave the VE a hypothetical at the hearing for a person “limited to
6 work involving simple, repetitive tasks . . . no more than occasional contact with co-
7 workers and no contact with the public.” (AR 56.) The VE opined that Plaintiff could
8 not do her past relevant work with those limitations because of the limitation on “no
9 public contact.” (AR 56-57.) However, the VE opined that Plaintiff could still do three
10 other jobs that existed in significant numbers in the national economy: (1) laundry
11 worker, Dictionary of Occupational Titles (“DOT”) code no. 922.687-058,
12 378,000 jobs nationally; (2) warehouse worker, DOT no. 922.687-058, 378,000
13 jobs nationally; and (3) hand packer, DOT no. 920.587-018, 410,000 jobs
14 nationally. (AR 57.)

15 **B. Summary of Administrative Decision, Appeals Council Review**

16 On April 2, 2015, the ALJ issued a decision denying Plaintiff’s Title XVI
17 SSI benefits application. (See AR 22.)

18 The ALJ found that Plaintiff had three impairments that qualified as
19 “severe”: (1) bipolar disorder with psychotic features, (2) anxiety disorder, and (3)
20 a history of polysubstance abuse. (See AR 13.) The ALJ also noted Plaintiff’s
21 history of obesity, hypothyroidism, and diabetes, but he found that none of those
22 conditions were severe. (AR 13-14.)

23 The ALJ found that Plaintiff did not meet or equal any of the listed
24 impairments set forth at 20 C.F.R. Par 404, Subpart P, Appendix 1. (AR 14.) The
25 ALJ found that Plaintiff had mild restrictions in activities of daily living; moderate
26 difficulties in social functioning; and moderate difficulties with concentration,
27 persistence, or pace. (AR 14-15.) The ALJ went on to find that Plaintiff retained
28 the residual functional capacity (“RFC”) to perform “a full range of work at all

1 exertional levels,” but the ALJ found that Plaintiff also had “nonexertional
2 limitations” that limited her to work involving “simple repetitive tasks,” with no
3 more than occasional contact with coworkers, and no contact with the public. (See
4 AR 15.) The ALJ also found that the Plaintiff’s activities of daily living were
5 inconsistent with her testimony at the hearing, and demonstrated that she retained
6 the capacity for work. (See AR 17-18.)

7 The ALJ found that Plaintiff was unable to perform any of her past relevant
8 work. (AR 20.) However, based on the testimony from the vocational expert at the
9 hearing, the ALJ found that, in light of Plaintiff’s RFC and her age, education,
10 and work experience, Plaintiff could still do the three jobs identified by the VE,
11 that is, (1) laundry worker, (2) warehouse worker, or (3) hand packer.

12 Accordingly, the ALJ denied Plaintiff’s SSI application at step five of the
13 sequential evaluation, finding that Plaintiff had not been under a disability from
14 April 30, 2013, the date the application was filed, through April 2, 2015, the date
15 of the ALJ’s decision. (See AR 21-22.)

16 On April 20, 2015, Plaintiff requested review by the Social Security
17 Administration Appeals Council of the ALJ’s denial of Plaintiff’s application. (See
18 AR 5-7.) Plaintiff apparently did not submit any new evidence to the Appeals
19 Council’s for further consideration at that time. (See *id.*)

20 On August 16, 2016, the Appeals Council issued a notice stating that it
21 found no reason to review the ALJ’s decision and denying Plaintiff’s request for
22 review. (AR 1-3.) Accordingly, the ALJ’s April 2, 2015 unfavorable decision
23 became the final decision of the Commissioner.

24 III.

25 STANDARD OF REVIEW

26 The issue in Social Security disability cases is whether the claimant is
27 “disabled” under section 1614(a)(3)(A) of the Social Security Act. Disability is
28 defined as the inability to engage in any substantial gainful activity by reason of

1 any medically determinable impairment or mental impairment or combination of
2 impairments that can be expected to result in death or that has lasted or can be
3 expected to last for a continuous period of not less than 12 months. See 42 U.S.C.
4 § 423(d)(1)(A); Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012).

5 **A. Five-Step Sequential Evaluation**

6 When the claimant’s case has proceeded to consideration by an ALJ, the
7 ALJ conducts a five-step sequential evaluation to determine at each step if the
8 claimant is or is not disabled. See Molina, 674 F.3d at 1110 (citing, inter alia, 20
9 C.F.R. §§ 404.1520(a), 416.920(a)).

10 First, the ALJ considers whether the claimant currently works at a job that
11 meets the criteria for “substantial gainful activity.” Id. If not, the ALJ proceeds to
12 a second step to determine whether the claimant has a “severe” medically
13 determinable physical or mental impairment or combination of impairments that
14 has lasted for more than 12 months. Id. If so, the ALJ proceeds to a third step to
15 determine whether the claimant’s impairments render the claimant disabled
16 because they “meet or equal” any of the “listed impairments” set forth in the
17 Social Security regulations at 20 C.F.R. Part 404, Subpart P, Appendix 1. See
18 Rounds v. Comm’r Soc. Sec. Admin., 807 F.3d 996, 1001 (9th Cir. 2015).

19 If the claimant’s impairments do not meet or equal a “listed impairment,”
20 before proceeding to the fourth step the ALJ assesses the claimant’s RFC, that is,
21 what the claimant can do on a sustained basis despite the limitations from her or
22 his impairments. See 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); Social Security
23 Ruling (“SSR”) 96-8p. After determining the claimant’s RFC, the ALJ proceeds to
24 the fourth step and determines whether the claimant has the RFC to perform her
25 past relevant work, either as she “actually” performed it when she worked in the
26 past, or as that same job is “generally” performed in the national economy. See
27 Stacy v. Colvin, 825 F.3d 563, 569 (9th Cir. 2016) (citing, inter alia, SSR 82-61);
28 see also 20 C.F.R. §§ 404.1560(b), 416.960(b).

1 If the claimant cannot perform her past relevant work, the ALJ proceeds to a
2 fifth and final step to determine whether there is any other work, in light of the
3 claimant’s RFC, age, education, and work experience, that the claimant can
4 perform and that exists in “significant numbers” in either the national or regional
5 economies. See 20 C.F.R. §§ 404.1520(g), 416.920(g); Tackett v. Apfel, 180 F.3d
6 1094, 1100-01 (9th Cir. 1999). If the claimant can do other work, she is not
7 disabled; but if the claimant cannot do other work and meets the duration
8 requirement, the claimant is disabled. See Tackett, 180 F.3d at 1099 (citing 20
9 C.F.R. § 404.1560(b)(3)); see also 20 C.F.R. § 416.960(b)(3).

10 The claimant generally bears the burden at each of steps one through four to
11 show that she is disabled, or that she meets the requirements to proceed to the next
12 step; and the claimant bears the ultimate burden to show that she is disabled. See,
13 e.g., Molina, 674 F.3d at 1110; Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir.
14 1995). However, at step five, the ALJ has a “limited” burden of production to
15 identify representative jobs that the claimant can perform and that exist in
16 “significant” numbers in the economy. See 20 C.F.R. §§ 404.1560(c)(1)-(2),
17 416.960(c)(1)-(2); Hill v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Tackett, 180
18 F.3d at 1100.

19 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision
20 denying benefits to determine whether it is free from legal error and supported by
21 substantial evidence in the record as a whole. Orn v. Astrue, 495 F.3d 625, 630
22 (9th Cir. 2007). “Substantial evidence” is “more than a mere scintilla but less than
23 a preponderance; it is such relevant evidence as a reasonable mind might accept as
24 adequate to support a conclusion.” Gutierrez v. Comm’r of Soc. Sec., 740 F.3d
25 519, 522-23 (9th Cir. 2014) (citations and internal punctuation omitted).

26 “The ALJ is responsible for determining credibility, resolving conflicts in
27 medical testimony, and for resolving ambiguities.” Andrews v. Shalala, 53 F.3d
28 1035, 1039 (9th Cir. 1995). Although this Court cannot substitute its discretion for

1 the Commissioner's, the Court nonetheless must review the record as a whole,
2 "weighing both the evidence that supports and the evidence that detracts from the
3 [Commissioner's] conclusion." Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
4 Cir. 2007) (internal quotation marks and citation omitted). "Even when the
5 evidence is susceptible to more than one rational interpretation, we must uphold
6 the ALJ's findings if they are supported by inferences reasonably drawn from the
7 record." Molina, 674 F.3d at 1110. See also Burch v. Barnhart, 400 F.3d 676, 679
8 (9th Cir. 2005) (court will uphold Commissioner's decision when evidence is
9 susceptible to more than one rational interpretation). However, the Court may
10 only review the reasons provided by the ALJ in the disability determination, and
11 may not affirm the ALJ on a ground upon which the ALJ did not rely. Garrison v.
12 Colvin, 759 F.3d 995, 1010 (9th Cir. 2014) (citation omitted); see also Orn, 495
13 F.3d at 630 (citation omitted).

14 Overall, the standard of review of an ALJ's decision is "highly deferential."
15 Rounds, 807 F.3d at 1002 (citing Valentine v. Comm'r Soc. Sec. Admin., 574 F.3d
16 685, 690 (9th Cir. 2009)).

17 Lastly, even when an ALJ has committed a legal error, a reviewing court
18 will still uphold the ALJ's decision if the error was harmless, that is, if it was
19 inconsequential to the ultimate nondisability determination, or where, despite the
20 error, the Agency's path "may reasonably be discerned," even if the Agency has
21 explained its decision "with less than ideal clarity." Brown-Hunter v. Colvin, 806
22 F.3d 487, 492 (9th Cir. 2015) (citations and internal punctuation omitted).

23 IV.

24 DISCUSSION

25 A. Disputed Issues

26 The "Amended Joint Submission" presents three disputed issues:

27 1. Whether the ALJ properly considered the relevant medical evidence
28 of record in assessing Plaintiff's RFC;

1 2. Whether the ALJ properly considered Plaintiff’s subjective statements
2 of record and testimony under oath in assessing her credibility; and

3 3. Whether the ALJ’s conclusion at step five of the five-step sequential
4 evaluation in relying on the VE’s numbers on other jobs available in the national
5 economy are correct, is supported by substantial evidence. (Am. J. Subm. at 3.)

6 **B. Issue No. 1: Medical Records and Residual Functional Capacity**

7 In the first disputed issue, Plaintiff argues that the ALJ “cherry-picked”
8 portions of reports from reviewing, non-examining State Agency physicians, and
9 did not properly analyze and credit the opinions from the various treating and
10 consulting physicians in the record who found that Plaintiff would be unable to
11 complete a 40-hour workweek at any job. (See Pl.’s Am. J. Subm. at 4-6.) In
12 particular, Plaintiff faults the ALJ’s reliance on opinions from the reviewing, non-
13 examining State Agency psychologists to which the ALJ gave “great weight,”
14 while the ALJ gave “little weight” to the opinions of Plaintiff’s treating physicians
15 at the Riverside County Department of Mental Health, and ostensibly gave “little
16 weight” to an opinion from a consultative examining psychiatrist. (See *id.*)

17 Plaintiff also complains that the ALJ’s opinion does not address the finding
18 from reviewing, non-examining State Agency physician Dr. Alan Berkowitz that
19 Plaintiff is only “capable of . . . carrying out simple one- to two-step unskilled
20 tasks.” (Pl.’s Am. J. Subm. at 5, citing AR 93.) Plaintiff maintains, without citing
21 any authority, that “the limitation to one- to two-step tasks set forth by the State
22 Agency reviewing physician is not necessarily consistent with the limitation in the
23 ALJ’s residual functional capacity to ‘simple repetitive tasks.’” (*Id.* at 6.)

24 1. Applicable Federal Law

25 In evaluating physicians’ opinions, the case law and the regulations
26 distinguish among three types of doctors: (1) those who treat the claimant (*i.e.*,
27 treating physicians); (2) those who see the claimant in person and perform a
28 consultative examination but do not treat the claimant (examining or consultative

1 physicians); and (3) those who neither treat nor examine the claimant, usually
2 only reviewing records (reviewing, non-examining physicians). Lester v. Chater,
3 81 F.3d 821, 830 (9th Cir. 1995); see also 20 C.F.R. §§ 416.902, 416.927(d). As a
4 general rule, more weight should be given to the opinion of a treating source than
5 to the opinions of doctors who did not treat the claimant. Winans v. Bowen, 853
6 F.2d 643, 647 (9th Cir. 1987); see also 20 C.F.R. § 416.927(d)(2).

7 A treating physician's opinion is not, however, necessarily conclusive as to
8 either a physical condition or the ultimate issue of disability, and an ALJ may
9 disregard a treating physician's opinion whether or not that opinion is
10 contradicted. See Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989)
11 (citation omitted). Where a treating physician's opinion is not contradicted, an
12 ALJ may reject that opinion only with "clear and convincing" reasons supported
13 by substantial evidence in the record. See Reddick v. Chater, 157 F.3d 715, 725
14 (9th Cir. 1998) (quoting Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir. 1993));
15 see also Magallanes, 881 F.2d at 751. Where the opinion of a claimant's treating
16 physician is contradicted, and the opinion of a non-treating source is based on
17 independent clinical findings that differ from those of the treating physician, the
18 opinion of the non-treating source may itself be substantial evidence, and it is then
19 solely the province of the ALJ to resolve the conflict. Andrews v. Shalala, 53 F.3d
20 1035, 1041 (9th Cir. 1995) (citing Magallanes). Where, on the other hand, a non-
21 treating source's opinion is not based on independent clinical findings, or rests on
22 clinical findings also considered by the treating physician, the opinion of the
23 treating physician may be rejected only if the ALJ gives "specific and legitimate"
24 reasons based on substantial evidence in the record. Id.; see also Thomas v.
25 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002).

26 2. Further Background, Analysis

27 Plaintiff was seen and treated numerous times at the Riverside County
28 Department of Mental Health ("RCDMH") from May 6, 2013 through February

1 18, 2014. (AR 341-423.) Plaintiff apparently had a session scheduled on April 8,
2 2014, but did not attend. (See AR 425-26.) As the ALJ noted, Dr. Staci Johnson
3 was apparently one of Plaintiff's treating physicians at RCDMH, and various
4 other "psychiatric practitioners" treated Plaintiff at RCDMH as well. (See, e.g.,
5 AR 19, 355, 357, 409-10, 412-13, 417-18, 421-23, 425.)

6 On August 11, 2013, a complete psychiatric evaluation was performed on
7 Plaintiff by consultative examining psychiatrist Dr. Sohini Parikh. (See AR 332-39
8 [Exh. 5F 1-8.) On August 30, 2013, as part of the disability determination at the
9 initial level, State Agency reviewing physician Dr. Chan-Wuk Kang completed a
10 "Disability Determination Explanation." (AR 67-79 [Exh. 1A 1-13].) On October
11 29, 2013, as part of the disability determination at the reconsideration level, State
12 Agency reviewing physician Dr. Alan Berkowitz completed a "Disability
13 Determination Explanation." (AR 81-95 [Exh. 3A 1-15].)

14 The ALJ stated that in determining Plaintiff's RFC, he gave "great weight"
15 to the opinions of the State Agency physicians, whom he describes as
16 "psychologists." (See AR 18, citing Exhs. 1A and 3A.) The ALJ noted that these
17 psychologists found that Plaintiff would be limited to "work involving simple
18 repetitive tasks," which the ALJ found "reasonable and supported by the record as
19 a whole." (AR 18.) The ALJ also noted that the examining psychiatrist,
20 Dr. Parikh, found that, while Plaintiff suffered from "mood disorder, bipolar
21 disorder, and polysubstance abuse," Dr. Parikh found that from "a psychiatric
22 standpoint" Plaintiff "had no more than mild mental limitations." (AR 18, citing
23 Exh. 5F.) However, while the ALJ said he agreed with Dr. Parikh that "claimant
24 is not disabled because of her mental impairments," he gave "little weight" to Dr.
25 Parikh's opinion because it did not include evidence that was received after her
26 examination of Plaintiff, and did not include Plaintiff's testimony at the hearing
27 before the ALJ, all of which the ALJ found showed that mental impairments had
28 more than a "minimal" effect on Plaintiff's ability to work. (AR 19.)

1 Nevertheless, the ALJ gave “little weight” to the opinions of Dr. Johnson
2 and the providers at RCMDH because (1) the opinions were conclusory; (2)
3 treatment notes during the relevant period documented normal findings; (3) Dr.
4 Johnson’s own personal examinations of Plaintiff were “minimal”; and (4) the
5 reports from the providers at RCDMH were internally inconsistent, and in
6 numerous instances suggested “normal” findings. (See AR 19.)

7 The ALJ also gave “little weight” to the letter and the function report
8 submitted by Plaintiff’s younger brother, James Phillips Diggs. (AR 19-20, citing
9 AR 191-92 [Exh. 1E 1-2] and AR 214-22 [Exh. 5E 1-9].) Among other things, the
10 ALJ found Mr. Diggs’ submissions to be inconsistent with Plaintiff’s admitted
11 activities, such as her ability to do some household chores, an ability which she
12 admitted to the consultative examiner Dr. Parikh. (AR 20, citing AR 335.)

13 The ALJ also found that the various GAF scores in the record were
14 “inconsistent with the treatment notes from that same time and the generally
15 benign findings from [the] mental status examinations” of Dr. Parikh and the State
16 Agency psychologists.² (AR 20.)

17 While the Court agrees with the thrust of Plaintiff’s criticism that the ALJ’s
18 reasoning is succinct, the Court finds that the ALJ’s analysis is nevertheless
19 supported by substantial evidence, and specific and legitimate enough to discount
20 the contrary opinions from the treating providers. In particular, the records from
21 Dr. Johnson are indeed minimal, a number of them are conclusory, and many
22 document only normal findings which contradict Plaintiff’s intermittent
23

24 ² A “GAF” or “Global Assessment of Functioning” score is a rough, subjective estimate
25 of an individual’s psychological, social, and occupational functioning, and is used to
26 reflect the individual’s need for treatment. See Vargas. v. Lambert, 159 F.3d 1161, 1164
27 n. 2 (9th Cir. 1998). GAF is scored on a scale of 0 to 100, with “1” being the lowest
28 possible score, representing severe mental health problems, and “100” being the highest,
representing “no symptoms” and “superior functioning in a wide range of activities.” See
Vasquez v. Astrue, 572 F.3d 586, 594-97 (9th Cir. 2009) (discussing GAF and DSM-IV).

1 complaints of severe impairment. For example, the “narrative reports” which the
2 ALJ attributes to Dr. Johnson (see AR 342, 397), and which state that Plaintiff
3 cannot complete a 40-hour workweek without decompensating, are indeed
4 conclusory, check-the-box style forms, and therefore may legitimately be rejected.
5 See Batson v. Comm’r of Soc. Sec., 359 F.3d 1190, 1195 (9th Cir. 2004) (ALJ may
6 discredit treating physicians' opinions that are conclusory, brief, and unsupported
7 by the record as a whole, or by objective medical findings); Crane v. Shalala, 76
8 F.3d 251, 253 (9th Cir. 1996) (ALJ may properly reject check-off report that did
9 not explain reasons for conclusions). As the ALJ stated, numerous treatment
10 notes, including “mental status exams,” document “normal” thought processes
11 and findings, or Plaintiff reporting that she is “okay,” throughout the relevant
12 period of claimed disability here. (See, e.g., AR 308 [psychiatric evaluation
13 showing generally “normal” findings]; AR 349 [some normal findings in mental
14 status exam]; AR 355 [Plaintiff reports she is “ok” and having fair response to
15 medications]; AR 394 [“able to manage daily activities”]; AR 422 [Plaintiff “states
16 that she is ‘ok’ reports stopping her medications” and “able to manage daily
17 activities”]. An ALJ may properly reject the opinions of treating providers where
18 records reveal such inconsistencies. See, e.g., Ghanim v. Colvin, 763 F.3d 1154,
19 1161 (9th Cir. 2014) (“conflict between treatment notes and a treating provider’s
20 opinions may constitute an adequate reason to discredit the opinions of a treating
21 physician or another treating provider” (citations omitted)).

22 Likewise, as discussed more fully below in regard to Plaintiff’s credibility,
23 the ALJ properly noted that Plaintiff’s many statements in the record about her
24 ability to perform daily activities conflicted with her brother’s opinion of her
25 limitations, and the ALJ’s reliance on those conflicts was a legitimate reason to
26 reject the brother’s opinion. See Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007)
27 (ALJ may reject third party's testimony upon giving reason germane to that
28 witness). Similarly, the ALJ legitimately rejected Plaintiff’s GAF scores for being

1 inconsistent with the treatment notes that reflected a range of GAF scores and
2 showed occasional benign findings. See, e.g., Duran v. Berryhill, No. CV 16-7416-
3 JPR, 2017 WL 2588069, at *8 (C.D. Cal. June 14, 2017) (unpublished) (ALJ may
4 disregard doctor’s GAF finding when inconsistent with record as a whole).

5 Taken together, the ALJ’s reasons for rejecting the opinions of the treating
6 providers are sufficiently specific and legitimate. See Molina, 674 F.3d at 1110;
7 Burch, 400 F.3d at 679.

8 Lastly, Plaintiff’s argument that the finding from one of the State Agency
9 reviewing psychologists, Dr. Berkowitz, that Plaintiff would be limited to
10 “carrying out one to two step unskilled tasks” (see AR 93) is inconsistent with the
11 ALJ’s RFC assessment that found a limitation to “simple repetitive tasks,” is
12 unavailing. Plaintiff cites no case authority in support of this argument, but the
13 Court construes it as an argument that the reasoning level posited by the ALJ may
14 be beyond the reasoning level that Dr. Berkowitz found for Plaintiff. See, e.g.,
15 Rounds, 807 F.3d at 1002-03 (analyzing whether limitation to “one to two step
16 tasks” matched “Level 1” reasoning set out in Dictionary of Occupational Titles
17 job descriptions); see also Dictionary of Occupational Titles, “Appendix C –
18 Components of the Definition Trailer” (1991 Westlaw 688702). However, the
19 Court notes that the “laundry worker” job only requires “Level 1” reasoning,
20 where the worker will “[a]pply commonsense understanding to carry out simple
21 one- or two-step instructions.” See DOT no. 361.687-018. “Level 1” is the lowest
22 reasoning level possible for any job described in the DOT. The other two jobs,
23 “warehouse worker,” DOT no. 922.687-058, and “hand packer,” DOT no.
24 920.587-018, both require Level 2 reasoning. Therefore, since the laundry worker
25 job only requires the lowest level of reasoning and includes the ability to carry out
26 one- or two-step instructions, the issue of whether “Level 2” reasoning for the
27 other two jobs requires more than the ability posited by Dr. Berkowitz is
28 irrelevant. In other words, it is not necessary to decide whether the “Level 2”

1 reasoning required for the other two jobs is beyond the limitation to one- to two-
2 step instructions because, even if it was, any error would be harmless because the
3 laundry worker job only requires Level 1 reasoning.

4 **C. Issue No. 2: Analysis of Plaintiff's Credibility**

5 In disputed issue number 2, Plaintiff argues that the ALJ improperly
6 discounted Plaintiff's credibility in a brief analysis that was not sufficiently specific
7 and did not provide "clear and convincing" reasons." (See Pl.'s Am. J. Subm. at 6-
8 9.) Plaintiff argues that the ALJ unfairly found that Plaintiff was not credible
9 because: (1) her activities of daily living are consistent with work demands; (2) she
10 has received minimal medical treatment; (3) the objective evidence does not
11 support her subjective complaints; and (4) Plaintiff was non-compliant and not
12 taking her medications for a period of three months. (See *id.* at 8.) In particular,
13 Plaintiff faults the ALJ's analysis of her activities of daily living, and states that
14 "she has readily admitted and acknowledged that there are days in which she can
15 perform certain activities while on other days she is not capable of performing
16 activities of daily living or work-related functioning." (*Id.* at 9.) Plaintiff also
17 complains that the ALJ is unfairly penalizing her for being "off of her
18 medications," and says that she "had in fact been trying to get her prescriptions
19 refilled but that for some reason apparently had difficulty in doing so." (*Id.* at 8.)
20 Plaintiff argues that, because the ALJ does not accuse her of malingering or
21 inappropriately magnifying her symptoms, his analysis of her credibility is not
22 supported by sufficiently "clear and convincing" reasons. (*Id.*)

23 1. Applicable Law

24 The ALJ must make two findings before the ALJ can find a claimant's pain
25 or symptom testimony is not credible. See Treichler v. Comm'r of Soc. Sec.
26 Admin., 775 F.3d 1090, 1102 (9th Cir. 2014) (citing 42 U.S.C. § 423(d)(5)(A)).
27 First, the ALJ must determine whether the claimant has presented objective
28 medical evidence of an underlying impairment "which could reasonably be

1 expected to produce the pain or other symptoms alleged.” Id. As long as the
2 plaintiff offers evidence of a medical impairment that could reasonably be
3 expected to produce pain or symptoms, the ALJ may not require the degree of
4 pain or symptoms to be corroborated by objective medical evidence. See Bunnell
5 v. Sullivan, 947 F.2d 341, 346-47 (9th Cir. 1991). Second, if the claimant has
6 produced such evidence, and the ALJ has not determined that the claimant is
7 malingering, the ALJ must provide ““specific, clear and convincing reasons for’
8 rejecting the claimant’s testimony regarding the severity of the claimant’s
9 symptoms.”” Treichler, 775 F.3d at 1102 (quoting Smolen v. Chater, 80 F.3d 1273,
10 1281 (9th Cir. 1996)).

11 An ALJ’s assessment of credibility should normally be given great weight,
12 and where an ALJ’s credibility finding is supported by substantial evidence, a
13 reviewing court may not engage in second-guessing. See Thomas, 278 F.3d at 959;
14 Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). Furthermore, “[a]n ALJ
15 cannot be required to believe every allegation of disabling pain, or else disability
16 benefits would be available for the asking” Fair v. Bowen, 885 F.2d 597, 603
17 (9th Cir. 1989) (citing 42 U.S.C. § 423(d)(5)).

18 When analyzing a claimant’s subjective pain symptoms, the ALJ may
19 consider factors relevant to the symptoms such as, inter alia, the claimant’s daily
20 activities; precipitating and aggravating factors; the type, dosage, effectiveness and
21 side effects of medication; treatment, other than medication, that the claimant
22 receives or has received for relief of pain or other symptoms; or any other
23 measures that the claimant has used to relieve pain or symptoms. See 20 C.F.R. §
24 416.929. The ALJ may employ “ordinary techniques of credibility evaluation,”
25 such as prior inconsistent statements concerning symptoms, testimony that
26 appears less than candid, or unexplained or inadequately explained failure to seek
27 treatment or follow a prescribed course of treatment, in assessing a claimant’s
28 credibility. See Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008)

1 (citations omitted); see also Thomas, 278 F.3d at 958-59 (in analyzing credibility
2 of claimant’s pain complaints, ALJ may consider reputation for truthfulness,
3 inconsistencies between testimony and conduct, work record); Fair, 885 F.2d at
4 603 (in analyzing claimant’s pain and symptoms, ALJ may consider evidence of
5 daily activities, inadequately-explained failure to seek treatment or follow
6 prescribed treatment). In addition, the ALJ may consider testimony from
7 physicians and third parties concerning the nature, severity, and effect of the
8 symptoms about which the claimant complains. See Thomas, 278 F.3d at 958-59
9 (citing Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997)).

10 Once a claimant has presented medical evidence of an underlying
11 impairment, the ALJ may not discredit the claimant’s testimony regarding
12 subjective pain and other symptoms merely because the symptoms, as opposed to
13 the impairments, are unsupported by objective medical evidence. Lingenfelter v.
14 Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007). Nevertheless, “[w]hile subjective
15 pain testimony cannot be rejected on the sole ground that it is not fully
16 corroborated by objective medical evidence, the medical evidence is still a relevant
17 factor in determining the severity of the claimant's pain and its disabling effects.”
18 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (citing 20 C.F.R. §
19 404.1529(c)(2)).

20 2. ALJ’s Opinion and Analysis

21 In assessing Plaintiff’s daily living activities, the ALJ noted that in her
22 function report Plaintiff “admitted that she performed some chores, folded clothes,
23 shopped, watched movies, and attended church.” (AR 14, citing AR 264-71 [Exh.
24 11E 1-8].) The ALJ also noted that treating providers observed that Plaintiff’s
25 activities of daily living were “good” or “appropriate.” (AR 14, citing AR 372,
26 390.) The ALJ also noted that Plaintiff was enrolled in culinary school at one
27 time, and attested that she took care of her ill mother. (AR 14, citing AR 394.) The
28 ALJ also noted that Plaintiff admitted at the hearing that she sometimes used a

1 computer at a library. (AR 16; see AR 44.) The ALJ found that Plaintiff's
2 admissions were "contradictory" to her claims of impairment. (AR 16.)

3 The ALJ found that Plaintiff's asserted symptoms and limitations were
4 "only partially credible" (AR 16), noting that Plaintiff told the consultative
5 examiner Dr. Parikh that she "performed personal care tasks, managed her
6 transportation, performed chores, got along with others, was able to focus, and
7 had no difficulty making decisions." (AR 17; see AR 335.) The ALJ also noted
8 that Plaintiff had received "minimal psychiatric care" since she became pregnant
9 in February 2014. (AR 17.) The ALJ opined that "the lack of emergency room
10 visits, psychiatric hospitalization, or frequent psychiatric outpatient visits since
11 2014 is evidence that the claimant's mental condition is not as severe as she
12 alleges." (AR 17.) The ALJ also noted that Plaintiff denied any psychiatric
13 problems in May 2013 (AR 311), and said she was "doing well" in December 2013
14 (AR 390). (AR 17.) The ALJ also stated that, although it was not the "primary
15 basis" for his decision, the three-month period where Plaintiff apparently went
16 without prescription medications at the start of her most-recent pregnancy
17 demonstrated "a possible unwillingness to do what is necessary to improve her
18 condition." (AR 17, citing 20 C.F.R. § 416.930.) The ALJ also noted that "the
19 claimant's . . . allegations of an inability to perform any substantial gainful activity
20 during the relevant period are considerably inconsistent." (AR 17-18.)

21 The Court finds that the ALJ's reasons for finding Plaintiff only "partially
22 credible" are sufficiently specific, clear, and convincing enough to support his
23 determination. As noted above, the record is replete with Plaintiff's contradictory
24 reports to providers and examiners, sometimes complaining of debilitating mental
25 symptoms and an inability to perform activities of daily living, and at other times
26 stating that she felt "okay" and reporting that she could manage activities of daily
27 living. The Court also notes the minimal records from February 2014 onward,
28 after Plaintiff became pregnant, as the ALJ noted. In particular, a record dated

1 February 18, 2014 from RCDMH reflects that Plaintiff denied “sleep/appetite/
2 mood/perceptual disturbances,” acknowledged that she was stopping her
3 medications after becoming pregnant, and stated that she was “able to manage
4 daily activities.” (AR 422.) The last progress note in the record from April 8, 2014
5 notes that Plaintiff did not show up for the session scheduled for that day. (AR
6 425.) Taken together, the Court finds that the ALJ’s credibility determination is
7 supported by substantial evidence in the record and is therefore not subject to
8 reversal here. See Thomas, 278 F.3d at 959; Nyman, 779 F.2d at 531.

9 **D. Issue No. 3: ALJ’s Acceptance of the VE’s Job Numbers**

10 Lastly, in disputed issue number 3, Plaintiff argues that the national job
11 numbers for the three jobs that the VE testified Plaintiff could still do in spite of
12 her limitations are inaccurate and cannot constitute “substantial evidence” to
13 support the step five denial. (See Pl.’s Am. J. Subm. at 10.) Plaintiff argues that the
14 VE’s figures include a number of part-time jobs that should not be included in the
15 VE’s numbers, and Plaintiff argues that the jobs cited by the VE also include
16 various sub-categories of jobs that cannot apply to Plaintiff. (See Def.’s Am. J.
17 Subm. at 10-12.) Plaintiff has attached to the Amended Joint Submission three
18 exhibits, corresponding to each of the three jobs identified by the VE at the
19 hearing, and those exhibits are apparently printouts from a “Skilltran” website
20 where a program called “Job Browser Pro” generates information on DOT job
21 descriptions. (See Pl.’s Am. J. Subm. at 10-12, citing “<http://www.skilltran.com>”
22 and Exhs. A, B, and C to Am. J. Subm.)

23 Defendant argues that the VE’s expertise provides the necessary foundation
24 for his testimony, and therefore no additional foundation is required. (Def.’s Am.
25 J. Subm. at 4, citing Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005).)
26 Defendant also argues that the Agency may only take “administrative notice” of
27 “reliable” job information from such sources as the U.S. Department of Labor, the
28 Dictionary of Occupational Titles, or from a vocational expert. (See Def.’s Am. J.

1 Subm. at 5, citing 20 C.F.R. §§ 404.1566(d), 416.966(d).) Defendant asserts that
2 Plaintiff’s “ex post facto” objection to the VE’s jobs numbers cannot establish
3 reversible error, and Defendant cites Gutierrez v. Comm’r, 740 F.3d 519, 527 (9th
4 Cir. 2014), for the proposition that “a claimant waives his right to challenge a
5 vocational expert’s testimony regarding the number of jobs available if the issue is
6 not raised at the hearing.” (Def.’s Am. J. Subm. at 5.)

7 1. Applicable Law, Analysis

8 At the threshold, the Court notes that Plaintiff apparently raises this issue
9 no. 3 and submits her supporting exhibits for the first time in the disability
10 application process to this District Court. The record reflects that Plaintiff’s
11 attorney at the hearing made no mention of any objection to the VE’s job numbers
12 at the hearing (see AR 56-66), and likewise Plaintiff apparently did not submit
13 these proposed new job numbers and supporting exhibits when she requested that
14 the Appeals Council review the ALJ’s denial. (See AR 1-7.) Accordingly, the
15 proposed exhibits are not part of the record that this District Court may review
16 here, and those exhibits may only be reviewed by the Agency if this Court decides
17 that remand is warranted. See Atkinson v. Colvin, No. 1:14-CV-01268-AC, 2015
18 WL 5330794, at *9 (D. Or. Sept. 9, 2015) (additional evidence that claimant
19 submitted to District Court after Appeals Council denied review of ALJ’s decision
20 is not part of administrative record (citing Brewes v. Comm’r of Soc. Sec. Admin.,
21 682 F.3d 1157, 1162 (9th Cir. 2012)).

22 However, contrary to Defendant’s argument, a claimant has not necessarily
23 “waived” consideration of new issues or new evidence that were not presented to
24 the ALJ or to the Appeals Council but are presented to the District Court for the
25 first time on appeal. See, e.g. Sims v. Apfel, 530 U.S. 103, 105 (2000) (holding that
26 “administrative exhaustion” requirement for district court review of denied
27 application only requires presentation of request for review of ALJ’s decision to
28 Appeals Council, and does not require prior “issue exhaustion” of every issue

1 subsequently raised in district court); see also Kokal v. Massanari, 163 F. Supp. 2d
2 1122, 1129 n.4 (N.D. Cal. Sept. 18, 2001) (district court may review new issue that
3 was not presented to Appeals Council where issue is only a legal issue that may be
4 decided on the record that was before the Appeals Council (citing, inter alia, Sims,
5 530 U.S. at 107)).

6 Rather, remand for consideration of new evidence that was not submitted to
7 the Appeals Council before it issued its decision affirming an ALJ's determination
8 may be appropriate if a claimant presents evidence that is "material" to
9 determining disability, and if there is "good cause" for the failure to produce the
10 evidence earlier. See Wainwright v. Sec'y of Health & Human Servs., 939 F.2d
11 680, 682 (9th Cir. 1991) (discussing case where new evidence became available
12 after denial of claim became final due to recent advances in medical technology
13 (citing Embry v. Bowen 849 F.2d 418, 423 (1988) and 42 U.S.C. § 405(g) (1988)).
14 To meet the "materiality" standard, the new or additional evidence must bear
15 "directly and substantially" on the matter in dispute. Wainwright, 939 F.2d at 682
16 (citing Ward v. Schweiker, 686 F.2d 762, 764 (9th Cir.1982)). Stated differently,
17 new evidence is material is there is a reasonable probability that the evidence
18 would have changed the outcome of the case. See Booz v. Sec'y of Health and
19 Human Svcs., 734 F.2d 1378, 1380-81 (9th Cir. 1984) (noting that Congress
20 amended Social Security law in 1980 to add "stricter" statutory standard for
21 showing of materiality). "Good cause" may be shown where the new evidence
22 was unavailable earlier and could not be produced by the claimant and considered
23 by the Agency before the decision denying the claimant's application became final.
24 See Wainwright, 939 F.2d at 682 (citing Embry, 849 F.2d at 423-34). However, a
25 claimant does not meet the "good cause" requirement simply by obtaining more
26 favorable evidence after his claim has been denied. See Wainwright, 939 F.2d at
27 682 (citing Clem v. Sullivan, 894 F.2d 328, 332 (9th Cir. 1990)).

28

1 Here, Plaintiff has not shown “good cause” for her failure to raise this issue
2 and present these numbers to the Appeals Council. The Court is not aware that
3 anywhere in the Amended Joint Submission has Plaintiff addressed the “good
4 cause” authorities cited above, or explained why this issue and these numbers
5 were not raised earlier. In the Court’s view, a remand should not be so easily
6 obtained, since it could potentially be an abuse of the appeals process.

7 Moreover, while the alternative job numbers that Plaintiff has proposed
8 could potentially be “material” as they could possibly bear “directly and
9 substantially” on the VE’s testimony and the ALJ’s denial at step five, the Court
10 questions whether Plaintiff has shown that her proposed job numbers, even had
11 good cause been shown, should be credited over the VE’s job numbers.

12 An ALJ, relying on the VE’s expertise, may take “administrative notice” of
13 “reliable job information” that is available from a non-exclusive list of “various
14 governmental and other publications” set forth in the regulations, including: (1)
15 the Dictionary of Occupational Titles; (2) County Business Patterns (a publication
16 of the Census Bureau); (3) Census Reports; (4) Occupational Analyses (prepared
17 for the SSA by various State employments agencies); and (5) the Occupational
18 Outlook Handbook, (published by the Bureau of Labor Statistic). See 20 C.F.R.
19 § 404.1566(d). See also Bayliss, 427 F.3d at 1218 (“An ALJ may take
20 administrative notice of any reliable job information, including information
21 provided by a VE.”) (citation omitted).

22 Plaintiff states that “[a]ccording to the Department of Labor Statistics, both
23 the laundry worker and warehouse worker occupations are contained within a
24 census group including 553 specialty occupations (unique DOT codes) and that
25 the total number of occupations in the national economy for all 553 unique DOT
26 codes is 419,840.” (Pl.’s Am. J. Subm. at 10.) In support of that assertion, Plaintiff
27 cites “Exhibit A, page 4 and Exhibit B, page 5” which are attached to the
28 Amended Joint Submission. (See id.) Plaintiff states that “approximately 25% of

1 these occupations are performed on a part time basis reducing the total number of
2 full time occupations for all 553 unique DOT codes to approximately 315,000.”
3 (Pl.’s Am. J. Subm. at 10-11.)

4 However, the Court’s review of page of four of Exhibit A, and page five of
5 Exhibit B, does not reveal any mention of “553 specialty occupations” or
6 “419,840” total occupations on either page. (See Am. J. Subm., Exh. A at 4 [Dkt.
7 No. 22-14]; Exh. B at 5 [Dkt. No. 22-2 at 5].) Plaintiff’s analysis apparently leaves
8 it to the Court to figure out how and where to confirm the accuracy of the “553
9 specialty occupations” and “419,840 total occupations” numbers, assumedly from
10 the other sources cited by Plaintiff such as the U.S. Department of Labor Statistics
11 or the “Job Browser by Skill TRAN” resource. (See Pl.’s Am. J. Subm. at 10.)³
12 The Court also notes Plaintiff’s arguments regarding Exhibit C, which suggests an
13 approximately 20% erosion due to part-time positions for the “hand packer” job
14 (see Am. J. Subm., Exh. C at 8 [Dkt. No. 22-3 at 8]), but that would still leave
15 328,000 full-time jobs out of the VE’s total number of 410,000 jobs. In sum, the
16 numbers for each of the three jobs that would remain even after part-time jobs are
17 excluded far exceed the 25,000 jobs that the Ninth Circuit in Gutierrez found
18 significant for national purposes. See Gutierrez, 740 F.3d at 529.

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21 ³ The Court does note that page 5 of Exhibit B, the page cited by Plaintiff, sets forth an
22 “estimated percentage of employment” that states “full-time 75.3%” and “part-time
23 24.7%,” although it is unclear from that page alone if the percentages correspond to the
24 same DOT code referenced by the VE. However, if the percentages do relate to the same
25 job, which is presumably why Plaintiff proffers the exhibit, even accepting that the VE’s
26 job numbers should be eroded by approximately 25% because they include part-time
27 jobs, that would still leave approximately 283,500 warehouse worker jobs in the national
28 economy, which is a “significant” number. See, e.g., Gutierrez, 740 F.3d at 529 (stating
that Ninth Circuit has “never set out a bright-line rule for what constitute a ‘significant
number’ of jobs”; and finding that 25,000 jobs in national economy qualifies as
“significant” number). Although Plaintiff asserts that the numbers for the “laundry
worker” should be similarly eroded by 25% because they contain part-time positions,
Exhibit A here does not appear to explicitly suggest such erosion.

1 Plaintiff apparently argues that information from the Department of Labor
2 Statistics, and figures generated by “Job Browser Pro / Skilltran,” would show the
3 number of “unique specialty occupations” within each of these DOT job
4 descriptions, and if the total number of full-time jobs for each occupation were
5 divided by the number of included specialty occupations, the remaining national
6 numbers for each job would no longer be “significant.” “Job Browser Pro” is
7 apparently a “DOT-based software” program available on the “SkillTRAN”
8 website that charges users a fee for access to various online job numbers and
9 resources. See, e.g., [http://www.skilltran.com/indExh.php/products/pc-based-](http://www.skilltran.com/indExh.php/products/pc-based-solutions/job-browser-pro)
10 [solutions/job-browser-pro](http://www.skilltran.com/indExh.php/products/pc-based-solutions/job-browser-pro) (2017). The Court does not have unique access to Job
11 Browser Pro, and Plaintiff has not pointed the Court to clear evidence from the
12 Department of Labor Statistics. Depositing with this Court three new “exhibits,”
13 containing 17 pages of unauthenticated data from 2012, rather than using the
14 information to question the VE before the ALJ or providing the information to the
15 Appeals Council, is, at a minimum, not the best practice. Plaintiff has not
16 convinced the Court that “unique specialty occupations” within each of the three
17 jobs posited by the VE erode the job numbers to the point that they are not
18 “significant,” even if Plaintiff had shown good cause for failing to provide the
19 alleged data to the ALJ or the Appeals Council.

20 Taken together, in addition to failing to show “good cause,” the Court finds
21 that Plaintiff has not shown that the alternative job numbers that Plaintiff has
22 proposed are “material” enough to warrant a remand for further consideration of
23 the proposed new evidence.

24 V.

25 CONCLUSION

26 For the reasons stated above,

27 IT IS ORDERED that the decision of the Commissioner is AFFIRMED,
28 and Judgment shall be so ENTERED.

1 IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies
2 of this Memorandum Opinion and Order and the Judgment on the respective
3 counsel for Plaintiff and Defendant.

4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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6 DATED: August 10, 2017

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9 JOHN D. EARLY
10 United States Magistrate Judge

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