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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 HILDA V. A.,

12 Plaintiff,

13 v.

14 KILOLO KIJAKAZI, Acting
15 Commissioner of Social Security,

16 Defendant.

Case No. 5:22-cv-01064-KES

MEMORANDUM OPINION AND
ORDER

17 **I.**

18 **BACKGROUND**

19 In 2013, Ms. Hilda V. A. (“Plaintiff”) filed applications for disability
20 insurance benefits (“DIB”) and supplemental security income (“SSI”) alleging
21 disability commencing May 20, 2013, due to synovial chondromatosis (i.e., benign
22 tumors affecting the joints) and depression. Administrative Record (“AR”) 249-
23 55. In September 2016, Administrative Law Judge (“ALJ”) Joseph P. Lisiecki, III
24 issued a decision denying Plaintiff’s applications. AR 17-24.

25 Plaintiff appealed to the Central District of California. On October 22, 2018,
26 the Court reversed and remanded the decision of the Commissioner to allow
27 consideration of opinion evidence from Plaintiff’s vocational expert and for further
28 proceedings consistent with the opinion. AR 1111-21.

1 On November 16, 2018, the Appeals Council remanded the case for a new
2 administrative hearing. AR 1122-24. ALJ Joel Tracy conducted a hearing on May
3 20, 2019, at which Plaintiff appeared with counsel and testified. AR 1042-81. On
4 July 25, 2019, the ALJ issued an unfavorable decision. AR 1021-33.

5 The ALJ found that Plaintiff suffered from the severe, medically
6 determinable impairments (“MDIs”) of “status-post right shoulder surgery and
7 right shoulder synovial osteochondromatosis” and degenerative disc disease of the
8 cervical and lumbar spine. AR 1024. The ALJ also found that Plaintiff’s
9 “adjustment disorder” was an MDI, but non-severe. AR 1024. The ALJ
10 determined that despite her MDIs, Plaintiff had the residual functional capacity
11 (“RFC”) to perform light work with the following additional limitations:

12 [N]o overhead reaching with the right upper extremity but otherwise
13 unlimited as to reaching; can frequently handle and finger with the
14 right upper extremity; can occasionally climb ramps and stairs; can
15 frequently stoop, crouch, crawl, kneel, and balance; can never climb
16 ladders, ropes, and scaffolds; and can never work around fast moving
17 heavy machinery.

18 AR 1027. The ALJ found that Plaintiff could perform her past work as an
19 accounting clerk; thus, she was not disabled. AR 1031-33.

20 II.

21 ISSUES PRESENTED

22 Issue One: Whether the ALJ erred in determining Plaintiff’s RFC. (Dkt. 24-
23 1 at 18.¹) Procedurally, Plaintiff contends that the ALJ was required (but failed) to
24 (1) include work restrictions to account for all “mild” mental functional
25 impairments or (2) explain in his written decision why none were necessary. (Id.
26 at 19-20.) Substantively, Plaintiff contends that the ALJ’s mental RFC

27 ¹ Page cites refer to the pagination imposed by the Court’s e-filing system.
28

1 determination lacks substantial evidentiary support. (Id. at 21.)

2 Issue Two: Whether the ALJ erred in evaluating a treating source statement
3 (“TSS” at AR 990-93) by physical therapist (“PT”) Jocelyn Washington and signed
4 by Lesley Po, M.D., of Molina Healthcare. (Dkt. 24-1 at 23.)

5 Issue Three: Whether the ALJ failed to discharge his legal duty to develop
6 the record. (Id. at 32.) Plaintiff contends that the ALJ failed to make “reasonable
7 efforts” to obtain treating records from Dr. Po after his medical office closed. (Id.
8 at 36-37.) Alternatively, Plaintiff contends that since the ALJ was unable to obtain
9 Dr. Po’s records outside of a short period in 2016, the ALJ was required to order a
10 second consultative examination to evaluate Plaintiff’s back pain. (Id. 36-37.)

11 III.

12 SUMMARY OF THE ALJ’S REASONING

13 The ALJ reviewed Plaintiff’s medical records from June 2013 which showed
14 right shoulder synovial osteochondromatosis causing pain and a reduced range of
15 motion. AR 1028. In July 2013, Plaintiff had surgery to address this issue. AR
16 432-33. After reviewing Plaintiff’s medical records, orthopedic consultative
17 examiner (“CE”) Rajeswari Kumar, M.D., described the right-shoulder surgery as
18 an “open excision ... with synovial debridement and removal of loose bodies;
19 roughly 70 removed.” AR 909.

20 After surgery, Plaintiff did physical therapy which improved her shoulder
21 function and mobility. AR 1029-30; see AR 524 (7/23/13: Plaintiff “doing fine; a
22 little sore ... felt fine while on vacation.” Her physical therapist “Anticipate[d] a
23 speedy recovery.”). In September 2013, Plaintiff was still “doing very well” post-
24 surgery. AR 1029, citing AR 617.

25 The ALJ noted a gap in right-shoulder treatment records from September
26 2013 to April 2016. AR 1029. The ALJ concluded that because her medical
27 records reflect “benefits from surgery and physical therapy,” Plaintiff could use her
28 right shoulder consistent with the assessed RFC. AR 1029.

1 Regarding Plaintiff’s degenerative disc disease, the ALJ summarized
2 treating records from 2014-2016, including an MRI.² AR 1029-30. The ALJ
3 concluded that these records showed “notable but not disabling” findings. AR
4 1030. In explaining this conclusion, the ALJ noted that on August 24, 2015,
5 Plaintiff wrote to the Social Security Administration requesting to cancel her
6 appeal because of medical improvement. AR 1029. Her letter states as follows:

7 Please cancel the appeal. I have got well and [have] been working. I
8 finished work assignment in May 2015 and I am looking for another
9 position. Please disregard the appeal. I was only applying for
10 disability for the year I was off and getting well.

11 AR 349; see also AR 999 (In March 2016, Plaintiff reported, “She did a lot of
12 moving this summer and helping others move with a lot of lifting and bending
13 activities. She was starting to have pain towards the end of the day in her legs
14 She continues to be working in accounting.”).

15 The ALJ’s finding that Plaintiff was not suffering disabling pain is
16 consistent with those of the State agency consultants, both of whom opined in 2014
17 that Plaintiff could do light work. AR 1030, citing AR 72-73, 115-16. The ALJ
18 also gave great weight to the April 2014 opinions of CE Dr. Kumar. AR 1030. Dr.
19 Kumar observed Plaintiff to have a non-antalgic gait, normal range of neck motion,
20 and nearly normal range of back motion. He was unable to test Plaintiff’s right
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22 ² During these years, Plaintiff reported “falling at work” on April 7, 2014.
23 AR 918. In August 2015, Plaintiff wrote that she “got well” and “has been
24 working.” AR 349. In May 2019, she testified that she had not “worked at all
25 since 2013.” AR 1049. She later clarified that she made “a few attempts” to work,
26 but her employers were dissatisfied with the “speed” of her job performance. AR
27 2057. At the July 2016 hearing, however, she testified that she lost her last
28 position because she could not do “reaching and lifting.” AR 34-35; see also AR
997 (Plaintiff was “unsure she will be able to attend” a diabetes prevention
program in April 2016 “due to possible job start.”).

1 shoulder because Plaintiff resisted moving it during the examination. AR 911-14.
2 At the time of this examination, she was not taking pain medication. AR 913. Dr.
3 Kumar also opined that Plaintiff could do light work. AR 914.

4 IV.

5 DISCUSSION

6 A. ISSUE ONE: Incorporation of Mild PRT Findings into the RFC.

7 1. Relevant Administrative Proceedings.

8 The ALJ evaluated the severity of Plaintiff's adjustment disorder by
9 engaging in the special psychiatric review technique ("PRT"). AR 1024-26. The
10 PRT requires ALJs to consider the degree of mental impairment in four functional
11 areas: (1) understanding, remembering, and applying information; (2) interacting
12 with others; (3) concentrating, persisting, or maintaining pace; and (4) adapting
13 and managing oneself. AR 1025-26. The ALJ found that Plaintiff had "mild"
14 impairments in all four areas. A mild limitation means that the claimant's
15 independent, appropriate, and effective functioning in the specified area is "slightly
16 limited." 20 C.F.R. Pt. 404, Subpt. P, Appx. 1 § 12.00(F)(2)(b). The ALJ based
17 these findings on (1) the opinions of two State agency psychological consultants
18 and a psychiatric CE, (2) "minimal evidence" of mental health treatment, and
19 (3) insufficient evidence of greater functional limitations. AR 1024-26.

20 At the end of this analysis, the ALJ explained that his RFC assessment
21 "reflects the degree of limitation [he] found" during the PRT analysis. AR 1026.

22 2. Relevant Law.

23 Plaintiff relies primarily on Hutton v. Astrue, 491 F. App'x 850 (9th Cir.
24 2012). (Dkt. 24-1 at 19.) In that case, an ALJ determined that a claimant with
25 PTSD had mild limitation in the area of maintaining concentration, persistence, or
26 pace. Id. at 850. The Ninth Circuit concluded that the ALJ erred in several ways,
27 including by failing to account for this limitation in the claimant's RFC. Id. at 851.

28 Since Hutton, some district courts have found error when an ALJ finds a

1 mild mental limitation during the PRT and fails to craft a corresponding functional
2 restriction for the RFC. For example, in Aida I. v. Saul, 2020 U.S. Dist. LEXIS
3 15021 (S.D. Cal. Jan. 28, 2020), a psychiatric consultative examiner opined that
4 the claimant was mildly limited in interacting with coworkers and the public,
5 working without special supervision, and maintaining concentration. The ALJ
6 neither gave reasons for rejecting these opinions nor included them in
7 hypotheticals posed to the VE, leading the VE to conclude that the claimant could
8 do her past relevant work as a loan officer. Id. at *14. The district court
9 questioned whether the VE would have testified that the claimant could work as a
10 loan officer if the VE had been asked a hypothetical that included any kind of work
11 restrictions accounting for the consultative examiner’s opinions. Due to the
12 incomplete hypotheticals posed to the VE, the district court concluded that the
13 ALJ’s step four finding lacked substantial evidentiary support. Id. at *16.
14 Similarly, in Gates v. Berryhill, No. ED CV 16-00049-AFM, 2017 U.S. Dist.
15 LEXIS 75440 (C.D. Cal. May 16, 2017), the district court held that the ALJ erred
16 by finding the claimant could do his past work as a budget analyst without
17 discussing how “mild” limitations in social functioning would affect his RFC.

18 Other district courts have distinguished Hutton, ruling that if the ALJ
19 (1) states that he/she considered whether the claimant’s mild metal limitations
20 would cause functional limitations and determined they would not; and
21 (2) substantial evidence supports that determination, then the ALJ’s decision must
22 be affirmed on appeal. For example, in Ball v. Colvin, No. CV 14-2110-DFM,
23 2015 U.S. Dist. Lexis 64152 (C.D. Cal. May 15, 2015), the ALJ found during the
24 PRT that the claimant had “mild” limitations in conducting activities of daily
25 living, social functioning, and maintaining concentration, but the ALJ did not
26 include any related restrictions in the claimant’s RFC, leading to a finding that she
27 could do her past work as a film editor. Id. at *4. Relying on Hutton, the claimant
28 argued that the ALJ had committed procedural error. The district court disagreed

1 that mild PRT findings trigger a duty either to accommodate or explain, reasoning
2 that “mild” limitations translate into a finding of “non-severe” for mental MDIs,
3 and non-severe MDIs, by definition, do not cause more than a minimal limitation
4 on one’s ability to do basic work activities. *Id.* at *7 (“[I]n many, if not most
5 cases, there will be no functional limitations from a non-severe impairment.”).

6 Similarly, in *Deborah K. B. v. Saul*, No. 2:20-cv-01703-JDE, 2020 U.S.
7 Dist. LEXIS 221660 (C.D. Cal. Nov. 25, 2020), the ALJ found that the claimant
8 had no limitation in understand information and “mild” limitations in the other
9 three functional areas. The ALJ did not include any mental restrictions in the
10 claimant’s RFC and found that she could do her past work as a gambling cashier.
11 *Id.* at *11-12. The court rejected a *Hutton*-based argument, pointing out that the
12 claimant bears the burden of proving disability at step four and demonstrating
13 prejudicial error on appeal. There (as here), the claimant argued that it is
14 reversible, procedural error if the ALJ finds a mental limitation during the PRT and
15 fails to translate it into a work restriction or explain why not. The claimant had not
16 advanced any argument, supported by evidence, that her mental MDIs caused a
17 functional limitation that precluded her from working as a gambling cashier. She
18 thus she failed to carry her burden on appeal. *Id.* at *13-15.

19 The Ninth Circuit’s recent decision in *Woods v. Kijakazi*, 32 F.4th 785 (9th
20 Cir. 2022) appears to resolve this conflict. In *Woods*, the ALJ employed the PRT
21 to find the claimant’s depression and anxiety non-severe. The ALJ found that
22 Woods had mild limitations in understanding, remembering, or applying
23 information and concentrating, persisting, or maintaining pace, but the ALJ did not
24 include any mental restrictions in Woods’s RFC. *Id.* at 788, 795. The ALJ
25 concluded that Woods was not disabled because she could do her past relevant
26 work as a hairstylist and cosmetologist. *Id.* at 788.

27 On appeal, Woods argued that the ALJ was required to “assess” if/how her
28 mild mental limitations reduced her ability to work (in other words, if/how they

1 translated into functional limitations) but failed to do so. Id. at 794. The Ninth
2 Circuit affirmed the ALJ’s decision, finding no procedural error that would require
3 an administrative do-over. The Ninth Circuit faulted Woods for failing to “identify
4 any particular evidence that the ALJ failed to consider or explain why the record
5 does not support the ALJ’s findings regarding her mental functioning.” Id. The
6 Ninth Circuit found the ALJ’s decision procedurally sufficient, even though the
7 ALJ neither accommodated Woods’s mild mental limitations in the RFC nor
8 explained why accommodations were unnecessary.

9 **3. Analysis of Claimed Error.**

10 a. Alleged Procedural Error.

11 Plaintiff’s procedural argument is that if an ALJ decides not to include any
12 functional restrictions in a claimant’s RFC due to mild mental limitations assessed
13 during the PRT, then the ALJ must expressly explain why not. (Dkt. 24-1 at 19.)
14 Plaintiff contends that the ALJ’s statement that the RFC “reflects the degree of
15 limitation” found in the PRT analysis (AR 1026) is “boilerplate” and insufficient to
16 satisfy the procedural requirements for written decisions. (Dkt. 24-1 at 21.) In
17 Woods, however, the ALJ made nearly the same statement. Leslie W. v. Comm’r
18 of Soc. Sec., District of Oregon, Case No. 3:20-cv-00805- BR, Dkt. 12-1, AR 45.³
19 The Ninth Circuit found no procedural error. Woods, 32 F.4th at 794. This Court
20 will follow the Ninth Circuit’s published precedent.

21 b. Alleged Substantive Error.

22 To the extent Plaintiff contends that the ALJ’s mental RFC determination
23 lacks substantial evidentiary support, Plaintiff points her poor performance at the
24 psychiatric evaluation on tests involving memory and math. (Dkt. 24-1 at 19,
25 citing AR 906.) But the psychiatric CE noted the inconsistency between her ability
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27 ³ This Court takes judicial notice of the ALJ’s decision filed as part of the
28 administrative record with the Oregon District Court.

1 to remember historical dates and upcoming medical appointments while failing to
2 recall any of four objects after three minutes. AR 905-06. The CE noted that
3 Plaintiff had worked in accounting and earned a master's degree in business
4 administration, but "when she was asked to subtract 7 from 10, she said she does
5 not know." AR 906. The CE concluded, "This was an indication that [she] was
6 not cooperating and was not setting forth her best effort." AR 906.

7 Plaintiff also contends that medical evidence shows "she struggled managing
8 her stress." (Dkt. 24-1 at 19, citing AR 392.) The cited record is from an annual
9 physical in June 2013. She endorsed an "unacceptable level" of stress "since her
10 mother died in March 2012." AR 392. She was offered a referral to behavioral
11 health to address her "grief reaction." AR 392. She continued working in the
12 months following her mother's death. AR 279.

13 Finally, Plaintiff points to evidence that she had an anxious mood in group
14 therapy. (Dkt. 24-1 at 19, citing AR 404.) The cited record reflects that on August
15 20, 2013, Plaintiff attended her first 90-minute group therapy session to discuss
16 healthy eating. She subjectively reported feeling anxious, but objectively, her
17 affect was "appropriate" and she "fit in well." AR 404.

18 None of this evidence undermines the ALJ's well-supported decision not to
19 include mental work restrictions in Plaintiff's RFC.

20 **B. ISSUE TWO: The ALJ's Evaluation of PT Washington's TSS.**

21 **1. Summary of the TSS.**

22 On April 29, 2016, PT Washington completed a TSS. AR 990-93. To
23 explain her treating relationship with Plaintiff, she wrote, "Performed initial
24 evaluation; gave standardized disability & recommended a plan of care of physical
25 therapy 2-3 times a week for twelve weeks minimum."⁴ AR 990. She provided

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27 ⁴ It is unclear when this occurred. No one has cited any treating records
28 authored by PT Washington. Plaintiff's PT after her July 2013 shoulder surgery
was with Frederick Heisler. AR 518. Plaintiff saw "Kelly" while Mr. Heisler was

1 physical therapy for Plaintiff's right-shoulder pain. AR 990. PT Washington
2 opined that Plaintiff could not lift or carry any amount of weight without
3 distinguishing between Plaintiff's right or left arm. AR 991. She also opined that
4 Plaintiff was "unable" to stand or walk and could only sit one hour during an eight-
5 hour workday. AR 991. PT Washington opined that Plaintiff needed a cane to
6 walk more than 100 feet. AR 991-92. When asked to supply clinical findings to
7 support these extreme opinions, PT Washington did not provide any. Instead, she
8 relayed Plaintiff's statements about using a cane. AR 992.

9 **2. The ALJ's Evaluation of the TSS.**

10 The ALJ gave the TSS "little weight." AR 1030. After summarizing its
11 findings, the ALJ found that the medical evidence "does not support such
12 restrictive limitations." AR 1030. As contrary evidence, the ALJ identified the
13 earlier-discussed medical records and Plaintiff's letter requesting to cancel her
14 appeal as showing "improvement with surgery and physical therapy and
15 acknowledged improvement in at least 2015." AR 1030.

16 Along with the August 2015 letter, the ALJ also cited a record from
17 February 2016 acknowledging improvement, as follows:

18 [Plaintiff] states that she was moving in Sept. 2015 but "overdid it."

19 She developed the low back pain at that time, but the pain resolved.

20 About 2 months ago, the low back pain developed again. ... Back

21 pain is worse with prolonged sitting and standing; going upstairs.

22 AR 930-31. While Plaintiff complained of lower back pain at that appointment,
23 she had a "normal range of motion," and a straight-leg raising test was negative
24 bilaterally. AR 932-33.

25 Finally, the ALJ summarized the findings of Dr. Kumar and the State agency

26 _____
27 on vacation. AR 524. Plaintiff's 2016 physical therapy, including the "PT Initial
28 Evaluation," was with Shaun Meredith. AR 999-1001.

1 consultants, which stand in stark contrast to those of PT Washington. The ALJ
2 gave them “great weight.” AR 1030-31.

3 **3. Analysis of Claimed Error.**

4 Plaintiff contends that the ALJ failed to give “specific and legitimate”
5 reasons for discounting PT Washington’s TSS. (Dkt. 24-1 at 26.) First, Plaintiff
6 contends that the ALJ failed to explain how the evidence of record contradicted the
7 TSS. (*Id.* at 30.) But the ALJ sufficiently explained his finding of inconsistency.
8 He noted that PT Washington’s “restrictive limitations” purportedly based on
9 conditions that had existed since 2012 were inconsistent with Plaintiff’s own
10 reports of later improvement. AR 1030.

11 Next, Plaintiff contends that the ALJ was required discuss whether the TSS
12 was consistent with a 2014 cervical spine MRI. (*Id.* at 29-31.) But PT
13 Washington did not claim to treat Plaintiff for back or neck pain (AR 990) and the
14 TSS did not mention the MRI. The ALJ adequately explained what other evidence
15 was inconsistent with the TSS.

16 Third, Plaintiff contends that the ALJ should have given more weight to the
17 TSS, as compared to the opinions of Dr. Kumar and the State agency consultants,
18 because PT Washington completed the TSS in 2016, whereas the other doctors
19 offered their opinions in 2014. (*Id.* at 35.) This argument does not establish legal
20 error, because the record supports the ALJ’s finding that the TSS’s extreme
21 limitations are inconsistent with other evidence from 2015 and 2016.

22 **C. ISSUE THREE: Development of the Record.**

23 **1. Relevant Law.**

24 A claimant bears the burden of proving disability and must furnish evidence
25 to satisfy that burden. *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001)
26 (citing 42 U.S.C. § 423(d)(5) and 20 C.F.R. § 404.1512(a) and (c)).
27 Notwithstanding that burden, an ALJ has an independent “duty to fully and fairly
28 develop the record and to assure that [a social security] claimant’s interests are

1 considered.” Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) (quoting
2 Brown v. Heckler, 713 F.2d 441, 443 (9th Cir. 1983)) (citation and internal
3 quotation marks omitted). This duty, however, is “triggered only when there is
4 ambiguous evidence or when the record is inadequate to allow for proper
5 evaluation of the evidence.” Mayes, 276 F.3d at 459-60.

6 When triggered, the ALJ “may discharge this duty in several ways,
7 including: subpoenaing the claimant’s physicians, submitting questions to the
8 claimant’s physicians, continuing the hearing, or keeping the record open after the
9 hearing to allow supplementation of the record.” Tonapetyan, 242 F.3d at 1150.
10 ALJs shall “make every reasonable effort to help [claimants] get medical evidence
11 from [their] own medical sources” when the claimants provide permission to make
12 such requests. 20 C.F.R. § 416.912.

13 **2. Relevant Administrative Proceedings.**

14 At the July 2016 hearing, the parties agreed to make exhibits 1A-13F part of
15 the record. AR 33-34. The representative’s brief did not identify any deficit in the
16 medical evidence. AR 382-84. Those exhibits show that Plaintiff lived in
17 Minnesota when she had her 2013 shoulder surgery. AR 432-33. Per the exhibits,
18 the earliest date Plaintiff saw Dr. Po in California was February 2016. AR 929-47,
19 994-7 (records from February-April 2016).

20 On April 29, 2019, the ALJ’s staff mailed a request for records to Dr. Po’s
21 Ontario address. AR 1233-37. A similar request was faxed the next day. AR
22 1238. On May 9, 2019, the letter was returned as undeliverable. AR 1239. A
23 second letter was mailed on May 16, and a second fax was sent. AR 1262-68.

24 At the May 20, 2019 hearing, Plaintiff testified that she remembered when
25 she began treating with Dr. Po (although that date is unclear), but “recently the
26 office closed.” AR 1046-47. After his office closed, she started to see a new
27 doctor in Fontana. AR 1047. The ALJ asked counsel about the status of additional
28 records from Dr. Po, mentioning a letter reflecting counsel’s numerous

1 unsuccessful attempts to obtain more records. AR 1045-46, referring to AR 1227-
2 30 (requesting Dr. Po's records from 2012-2019).

3 On May 22, 2019, and June 6, 2019, the ALJ mailed a request for records to
4 Molina Healthcare in Ontario and Pomona. AR 1242-47, 1254-58. Both letters
5 were returned as undeliverable. AR 1252, 1261. Similar faxes were sent the
6 following day. AR 1248, 1259. On May 24, 2019, the ALJ received a response to
7 a fax saying, "This is NOT our patient." AR 1282-83. On June 21, 2019, the ALJ
8 advised Plaintiff's counsel to view Exhibits 34E, 35E, 36E, and 15F, the exhibits
9 reflecting the returned mail and "not our patient" response. AR 1270, referring to
10 AR 1242-1269, 1283-84.

11 Knowing this, on August 20, 2019, Plaintiff's counsel submitted a post-
12 hearing brief that neither complained about the lack of additional records from Dr.
13 Po nor requested a second orthopedic consultative examination. AR 1273-75.
14 Counsel did not submit any records from the new doctor in Fontana.

15 **3. Analysis of Claimed Error.**

16 a. Dr. Po's Records.

17 Plaintiff fails to identify what additional reasonable steps the ALJ should
18 have pursued to obtain records from Dr. Po, particularly after Molina Healthcare
19 denied having Plaintiff as a patient. Plaintiff has not demonstrated legal error with
20 this argument.

21 b. Second Orthopedic Consultative Examination.

22 Plaintiff argues that since the ALJ was unable to procure all of Dr. Po's
23 records, the ALJ was required to order a second consultative examination to
24 evaluate Plaintiff's more recent complaints of back pain. AR 36-37.

25 But Plaintiff underwent an orthopedic consultative examination with Dr.
26 Kumar in April 2014. That physical examination revealed only mild finding. AR
27 909-14. In August 2015, she reported that she "got well" and had returned to
28 work. AR 349. By March 2016, she was well enough to able to help others move

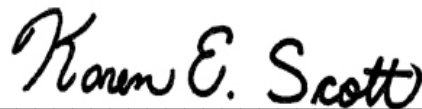
1 “with a lot of lifting and bending activities.” AR 999. Thus, there was sufficient
2 evidence for the ALJ to determine that Plaintiff’s back pain was not disabling,
3 even without a second orthopedic consultative examination. Moreover, at her
4 appointment with Dr. Kumar, he could not evaluate her then-chief complaint, i.e.,
5 right-shoulder pain, because she resisted moving her right arm during the
6 examination. AR 911-14. Similarly, at Plaintiff’s psychiatric consultation, she
7 failed to cooperate and put forth her best effort. AR 906. This background calls
8 into question the utility of a second orthopedic consultative examination and
9 provides an additional reason why the ALJ did not err by failing to order it.

10 **V.**

11 **CONCLUSION**

12 For the reasons stated above, IT IS ORDERED that (1) Plaintiff’s motion for
13 summary judgment (Dkt. 24) shall be DENIED; (2) Defendant’s motion for
14 summary judgment (Dkt. 29) shall be GRANTED; and (3) judgment shall be
15 entered AFFIRMING the decision of the Commissioner.

16
17 DATED: January 30, 2023

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KAREN E. SCOTT
20 United States Magistrate Judge