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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RHONDA E. G.,
Plaintiff,
v.
ANDREW M. SAUL, Commissioner
of Social Security,
Defendant.

Case No. 8:20-cv-01423 KES

MEMORANDUM OPINION AND
ORDER

I.
BACKGROUND

In March 2017, Rhonda E. G. (“Plaintiff”) applied for Title II Social Security disability benefits alleging that she became unable to work fulltime on April 24, 2014, due to depression, anxiety, and stress-related physical disorders such as hypertension, insomnia, and incontinence.¹ Administrative Record (“AR”) 173–74, 199, 212. In April 2014, she pursued a workers’ compensation claim alleging that her supervisor had caused her poor mental health by subjecting her to harassment and unfair treatment. AR 320. On July 10, 2019, an Administrative Law Judge

¹ Plaintiff had some part-time earnings in 2015 and 2017 that did not rise to the level of substantial gainful activity. AR 17.

1 (“ALJ”) conducted a hearing at which Plaintiff, who was represented by counsel,
2 appeared and testified, as did a vocational expert (“VE”). AR 34–65.

3 On August 27, 2019, the ALJ issued an unfavorable decision. AR 15–28.
4 The ALJ found that Plaintiff suffered from the severe, medically determinable
5 impairments (“MDIs”) of “major depressive disorder (MDD); generalized anxiety
6 disorder (GAD); irritable bowel syndrome (IBS); and incontinence.” AR 17. The
7 ALJ found that Plaintiff’s other MDIs, including gastroesophageal reflux disorder
8 (“GERD”), eczema, alopecia, insomnia, bunions, and hypothyroidism, were not
9 severe. AR 18–19. The ALJ also found that Plaintiff’s mental impairments caused
10 only mild or moderate functional limitations. AR 20. Accordingly, the ALJ found
11 that Plaintiff had a residual functional capacity (“RFC”) to perform work at all
12 exertional levels but with the following non-exertional limitations:

13 [Plaintiff] is limited to performing simple, routine, repetitive tasks for
14 periods of two hours at a time. Can perform low-stress work, which is
15 defined as involving only occasional decision making and occasional
16 changes in the work setting. Can have occasional contact with the
17 public and coworkers. Can have occasional contact with supervisors
18 after any initial training period. Cannot perform tandem tasks or work
19 as part of a team. Must have ready access to a bathroom, meaning that
20 a bathroom must be within a few minutes’ walk.

21 AR 21.

22 Based on this RFC and the VE’s testimony, the ALJ found that Plaintiff
23 could no longer perform her past relevant work as a customer service
24 representative, cashier, procurement clerk, administrative assistant, or audit clerk.
25 AR 26–27. Plaintiff could, however, work as a garment folder (Dictionary of
26 Occupational Titles [“DOT”] 789.687-066), seam presser (DOT 789.687-166), and
27
28

1 table worker (DOT 739.687-182) (collectively, the “Alternative Jobs”).² AR 27–
2 28. The ALJ concluded that Plaintiff was not disabled. AR 28.

3 **II.**

4 **ISSUES PRESENTED**

5 Issue One: Whether the ALJ erred in weighing the medical evidence to
6 determine Plaintiff’s RFC. (Dkt. 16, Joint Stipulation [“JS”] at 4.)

7 Issue Two: Whether the ALJ erred in evaluating (a) Plaintiff’s subjective
8 symptom testimony and (b) the lay statements of Plaintiff’s mother. (Id.)

9 **III.**

10 **DISCUSSION**

11 **A. ISSUE ONE: The ALJ’s Evaluation of the Medical Evidence.**

12 The Court identified six distinct sub-issues in the Joint Stipulation and
13 addresses each below. Plaintiff contends that the ALJ erred by (a) failing to
14 accommodate Plaintiff’s mild or moderate difficulties adhering to a schedule or
15 give reasons for rejecting such opinions from the state agency consultants and
16 consultative examiner; (b) violating the treating physician rule, 20 C.F.R.
17 § 404.1527(c)(2), by rejecting the work restrictions of Robert S. Sanford, M.D., a
18 urologist who evaluated Plaintiff for her workers’ compensation claim; (c) failing to
19 limit Plaintiff’s use of her right hand due to tenosynovitis; (d) finding that
20 Plaintiff’s psychiatric symptoms, combined with her need for frequent bathroom
21 breaks, would not cause her to be off-task more than 15% of the time;
22 (e) attempting to accommodate Plaintiff’s incontinence by restricting her to work
23 “within a few minutes’ walk” from a bathroom; and (f) failing to include any
24 exertional limits in Plaintiff’s RFC. (JS at 4–13.)

25
26 ² The full DOT descriptions of these jobs are available at 1991 WL 681266
27 (garment folder), 1991 WL 681290 (seam presser), and 1991 WL 680217 (table
28 worker). All of these positions require only reasoning level 1, the lowest reasoning
level in the DOT.

1 **1. Sub-Issue 1(a): Persistence-Related Opinions.**

2 Plaintiff underwent a psychological consultative examination by Edward B.
3 Keehn, Ph.D., Psy.D, on June 19, 2017. AR 1347–51. Dr. Keehn noted that
4 Plaintiff lived by herself and was able to manage her own money, perform
5 household chores, shop, and cook. AR 1349. He assessed a Global Assessment of
6 Functioning (“GAF”) score of 65.³ AR 1350. After observing Plaintiff interact
7 with his staff and perform several standard tests, Dr. Keehn concluded that she had
8 only “mild difficulties” maintaining focus, attention, concentration, persistence, and
9 pace. AR 1350–51. He also found she would have only “mild difficulties”
10 completing a normal workday or workweek. AR 1351.

11 Two state agency consultants also considered Plaintiff’s mental RFC. In July
12 2017, M. D. Morgan, M.D., opined that Plaintiff was “not significantly limited” in
13 her ability to perform activities within a schedule, maintain regular attendance, and
14 be punctual within customary tolerances. AR 78–79. After reviewing the Findings
15 of Fact and Analysis of Evidence (“FOFAE”) (AR 73–75), Dr. Morgan concluded
16 that Plaintiff was, however, “moderately limited” in her ability to “complete a
17 normal workday and workweek without interruptions from psychologically based
18

19 ³ “A GAF score is a rough estimate of an individual’s psychological, social,
20 and occupational functioning used to reflect the individual’s need for treatment.”
21 Vargas v. Lambert, 159 F.3d 1161, 1164 n.2 (9th Cir. 1998). The GAF includes a
22 scale ranging from 0–100, and indicates a “clinician’s judgment of the individual’s
23 overall level of functioning.” American Psychiatric Association, Diagnostic and
24 Statistical Manual of Mental Disorders 32 (4th ed. text rev. 2000) (hereinafter
25 DSM–IV). According to DSM–IV, a GAF score of 61–70 indicates “some mild
26 symptoms (e.g., depressed mood and mild insomnia) or some difficulty in social,
27 occupational, or school functioning (e.g., occasional truancy, or theft within
28 household), but “generally functioning well, has some meaningful interpersonal
relationships.” Id. 34. Although GAF scores, standing alone, do not control
determinations of whether a person’s mental impairments rise to the level of a
disability (or interact with physical impairments to create a disability), they may be
a useful measurement.” Garrison v. Colvin, 759 F.3d 995, 1003 n.4 (9th Cir. 2014).

1 symptoms and to perform at a consistent pace without an unreasonable number and
2 length of rest periods.” AR 79. Dr. Morgan also opined that Plaintiff was capable
3 of skilled work with limited public contact. AR 81–82.

4 On reconsideration in September 2017, Michael D’Adamo, Ph.D., found
5 Plaintiff “moderately” limited in both categories mentioned above. AR 94–95. Dr.
6 D’Adamo explained, “Mood and anxiety symptoms limit her to tasks which do not
7 require sustained focusing or complex attention. In the context of simple tasks
8 which complete easily she can maintain CPP [concentration, persistence, and
9 pace].” AR 95. Dr. D’Adamo limited Plaintiff to unskilled work. AR 97.

10 The ALJ gave “great weight” to the opinions of Drs. Morgan and D’Adamo.
11 AR 26. The ALJ gave “some weight” to Dr. Keehn’s opinion, because “it is
12 consistent with conservative treatment and lack of hospitalization, but some
13 additional limitations are warranted to accommodate [Plaintiff’s] subjective
14 complaints.” AR 24.

15 Plaintiff argues that the ALJ erred by failing either to incorporate these
16 doctors’ opinions concerning Plaintiff’s difficulties performing within a schedule
17 and completing a normal workday or workweek or give specific, legitimate reasons
18 for rejecting those opinions. (JS at 5–6, 10.)

19 Plaintiff fails to demonstrate legal error. Dr. D’Adamo, whose opinions were
20 more restrictive than those of either Drs. Morgan or Keehn, clearly explained his
21 view that Plaintiff could maintain concentration, persistence, and pace sufficiently
22 to sustain employment if limited to simple work (AR 95), and the ALJ limited
23 Plaintiff’s RFC to simple, repetitive, routine tasks (AR 21). Indeed, all three
24 Alternative Jobs require only reasoning level 1, the lowest reasoning requirement in
25 the DOT. Rounds v. Comm’r Soc. Sec. Admin., 807 F.3d 996, 1002 (9th Cir.
26 2015) (“There are six GED Reasoning Levels that range from Level One (simplest)
27 to Level Six (most complex).”). Level 1 reasoning requires workers to “[a]pply
28 commonsense understanding to carry out simple one- or two-step instructions [and]

1 [d]eal with standardized situations with occasional or no variables in or from these
2 situations encountered on the job.” DOT, App. C, 1991 WL 688702.

3 Plaintiff appears to argue that an opinion of mild or moderate limitation in
4 the area of attendance or persistence requires some accommodation in her RFC, like
5 an allowance to be off-task some percentage of the workday, although Plaintiff does
6 not explain how she would translate such opinions into RFC restrictions. (JS at 10–
7 11.) Plaintiff fails to address the multiple cases holding that mild or moderate
8 limitations in such areas of mental functioning are sufficiently accommodated by
9 limiting a claimant to simple, repetitive, routine tasks. See, e.g., Shaibi v. Berryhill,
10 883 F.3d 1102, 1107 (9th Cir. 2017) (finding “no obvious inconsistency” between
11 physician’s opinion that the claimant was “moderately limited” in his interactions
12 with coworkers and the ALJ’s RFC finding that limited plaintiff to “simple routine
13 tasks in a non-public setting, with occasional interactions with coworkers”);
14 Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1173 (9th Cir. 2008) (finding limitation
15 to “simple, routine, repetitive” work sufficiently accommodated medical opinion
16 evidence that plaintiff had “moderate” limitation in pace and “other mental
17 limitations regarding attention, concentration, and adaptation”); Hector T. v. Saul,
18 No. CV 19-9797 PVC, 2021 WL 1163162, at *10 n.8, 2021 U.S. Dist. LEXIS
19 58419, at *28 n.8 (C.D. Cal. Mar. 26, 2021) (“[T]he ALJ accounted for the
20 moderate mental limitations [the physician] opined by limiting [the claimant’s]
21 RFC to simple, unskilled tasks with no more than minimal change in tasks and no
22 more than occasional brief intermittent work with coworkers, supervisors, and the
23 public.”); McLain v. Astrue, No. SACV 10-1108 JC, 2011 WL 2174895, at *6,
24 2011 U.S. Dist. LEXIS 60496, at *18–19 (C.D. Cal. June 3, 2011) (“Moderate
25 mental functional limitations—specifically limitations in social functioning and
26 adaptation—are not *per se* disabling, nor do they preclude the performance of jobs
27 that involve simple, repetitive tasks.”); Rogers v. Comm’r of Soc. Sec., No. 09-CV-
28 01972, 2011 WL 445047, at *11–12, 2011 U.S. Dist. LEXIS 13741, at *33–34

1 (E.D. Cal. Jan. 25, 2011) (finding that RFC assessment that limits a claimant to
2 simple, repetitive tasks adequately accounts for moderate limitations in social
3 functioning), aff'd sub nom. Rogers v. Comm'r of Soc. Sec. Admin., 490 F. App'x
4 15 (9th Cir. 2012); see also Koehler v. Astrue, 283 F. App'x 443, 445 (9th Cir.
5 2008) (finding that claimant lacked a “severe” mental impairment was proper even
6 though claimant had “moderate” limitation in the “ability to respond to changes in
7 the workplace setting”).

8 **2. Sub-Issue 1(b): Dr. Sanford.**

9 Dr. Sanford initially evaluated Plaintiff in July 2017. AR 1454. After
10 performing a physical examination, he concluded that the only work restriction
11 warranted was “ready access to a clean restroom.” AR 1458. In September 2017,
12 he authored a follow-up report. AR 1462. At that time, his observations of
13 Plaintiff’s physical condition were “essentially unchanged.” AR 1463. He wrote a
14 second follow-up report in November 2017. AR 1465. Again, his assessment of
15 Plaintiff’s physical condition was “unchanged.” AR 1466. This time, however, he
16 added a new work restriction, restricting Plaintiff to “only ... sedentary work.”⁴
17 AR 1467. The ALJ gave Dr. Sanford’s opinions “some weight,” explaining that
18 she would “adopt the limitation regarding access to restroom. However, the
19 opinion of sedentary work is not warranted based on otherwise normal physical
20 examination.” AR 24.

21 Plaintiff argues that the ALJ failed to give a specific, legitimate reason for
22 rejecting Dr. Sanford’s restriction to sedentary work, because it was not intended to
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24 ⁴ In the context of California workers’ compensation law, “sedentary” work
25 means “the individual can do work predominantly in a sitting position at a bench,
26 desk or table with a minimum of demands for physical effort and with some degree
27 of walking and standing being permitted.” State of California, Dep’t of Indus.
28 Relations, Div. of Workers’ Comp., Schedule for Rating Permanent Disabilities 2-19 (Apr. 1997), available at <<https://www.dir.ca.gov/dwc/pdr1997.pdf>> (last viewed May 27, 2021).

1 address pain from a musculoskeletal impairment, such that it is not inconsistent
2 with an otherwise normal physical examination. Rather, Plaintiff argues that Dr.
3 Sanford restricted her to sedentary work to address her urinary incontinence. (JS at
4 7– 8) (“Plaintiff’s incontinence would simply be made worse and aggravated if she
5 were to strain to perform work activity at levels greater than sedentary.”).

6 First, Plaintiff fails to explain how any error in the ALJ’s evaluation of Dr.
7 Sanford’s opinion would be prejudicial, because the table worker Alternative Job is
8 sedentary (DOT 739.687-182), and the VE testified that 25,000 such jobs exist in
9 the national economy. AR 59; see Gutierrez v. Comm’r of Soc. Sec., 740 F.3d 519,
10 528–29 (9th Cir. 2014) (holding that 25,000 jobs is a significant number of jobs in
11 the national economy); see also Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050,
12 1055 (9th Cir. 2006) (ALJ’s error is harmless if “inconsequential to the ultimate
13 nondisability determination”).

14 Second, Plaintiff fails to develop this argument. Plaintiff points to nothing in
15 Dr. Sanford’s reports that explains why he imposed the sedentary restriction.
16 Plaintiff points to no other evidence, either from a medical source or Plaintiff’s own
17 testimony, that tends to show Plaintiff’s incontinence was worse when she was
18 standing or walking.⁵ The ALJ correctly concluded that Dr. Sanford’s restriction to
19 sedentary work has no obvious support in his own treating records, and ALJs may
20 discount treating physician opinions that lack support. Tommasetti v. Astrue, 533
21 F.3d 1035, 1041 (9th Cir. 2008) (incongruity between treating physician’s opinion
22 and his treating records is a specific and legitimate reason for rejecting physician’s
23 opinion); Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) (ALJ “need not
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25

26 ⁵ In February 2019, Plaintiff reported walking for 30 minutes about three
27 times per week. AR 1525. At the hearing in July 2019, she testified that 30
28 minutes was the longest she could walk before getting too tired to continue without
mentioning incontinence as a limitation on walking. AR 48.

1 accept the opinion of any physician, including a treating physician, if that opinion is
2 brief, conclusory and inadequately supported by clinical findings”).

3 **3. Sub-Issue 1(c): Handling/Fingering Restrictions.**

4 In November 2013, Plaintiff complained to Kaiser of hand pain affecting her
5 “right hand up to the elbow x 5 months.” AR 528. At that time, she was still
6 working “in an office setting” and exercising in the evenings “120 minutes per
7 week at a moderate to strenuous level.” AR 528–29. Her right wrist was tender to
8 palpation, but she had a “good range of motion.” AR 530. She was diagnosed with
9 tenosynovitis and counseled to do “range of motion exercises, ice as needed” and
10 wear a wrist brace. AR 531. From this, Plaintiff argues that her RFC should have
11 accommodated her tenosynovitis, presumably by restricting the use of her right
12 hand and wrist. (JS at 10.)

13 Plaintiff fails to cite any medical evidence after her alleged disability onset
14 date discussing wrist pain. Plaintiff fails to identify any medical source who opined
15 that Plaintiff had functional limitations affecting her right hand and wrist. Again,
16 Plaintiff fails to demonstrate legal error.

17 **4. Sub-Issue 1(d): Time Off-Task for Bathroom Breaks.**

18 Plaintiff argues that the ALJ erred by failing to find that she will need to take
19 unscheduled bathroom breaks with a frequency and duration that precludes
20 employment. (JS at 9–10.)

21 a. Summary of Relevant Evidence.

22 Plaintiff fails to cite any medical records discussing how frequently she must
23 use the bathroom or how long she must typically spend in the bathroom. The Court
24 was unable to find any medical source who opined that Plaintiff could work only if
25 given bathroom break time exceeding the time normally tolerated in the workplace.
26 A chronological summary of records discussing Plaintiff’s incontinence is as
27 follows:
28

1 • January 2015: Plaintiff reported numerous anxiety-related physical
2 symptoms that she attributed to her unkind ex-supervisor, but not incontinence. AR
3 3202, 3207. She was able to drive, use a computer, maintain a romantic
4 relationship, and visit family. AR 3203, 3209.

5 • June 2015: Plaintiff reported “gastrointestinal disturbances subsequent to
6 her exposure to the stressful work environment,” but not incontinence. AR 374.

7 • October 2015: Internist Michael Rudolph, M.D., recommended that
8 Plaintiff “start taking Metamucil three times a day” to treat diarrhea. AR 1473.

9 • January 2017: Mark M. Davidson, M.D., prepared a qualified medical
10 evaluator’s (“QME”) report for Plaintiff’s workers’ compensation case. AR 1249.
11 Plaintiff told Dr. Davidson that she experienced diarrhea two or three times weekly.
12 AR 1251. She reported urinary and bowel incontinence. AR 1251. Her fecal
13 incontinence had started in April 2016, while her urinary incontinence had started
14 in 2014. AR 1252. She acknowledged that Metamucil had been recommended, but
15 she did not take it. AR 1252. Her incontinence symptoms had worsened “to the
16 point that she wears a diaper when she leaves the house” AR 1252. Despite
17 these difficulties, she could still conduct normal activities of daily living. AR 1255.
18 She was not taking any medication for gastrointestinal complaints. AR 1263. Dr.
19 Davidson determined that she had IBS and GERD. AR 1262. He concluded that
20 Plaintiff had not had a period of temporary total disability due to her
21 gastrointestinal disorders. AR 1266. As a work restriction, he opined only that she
22 should be restricted against “undue or extreme stress.” AR 1267. He did not
23 impose any restrictions related to the frequency or duration of allowed bathroom
24 breaks.

25 • January 2017: Psychiatrist Gennady Musher, M.D., Ph.D., completed a
26 “Final Psychiatric Evaluation and Report.” AR 319–30. He noted the physical
27 symptoms Plaintiff originally reported in 2016, which did not include incontinence.
28 AR 321. Plaintiff reported “no significant changes in her physical health” since

1 December 2016. AR 323. Dr. Musher summarized the symptoms she was
2 experiencing in 2017, which included some physical complaints like muscle tension
3 and sleep disturbance, but they did not include incontinence. AR 328.

4 • May 2017: Plaintiff reported, “I am unable to control my urine and bowel
5 movements.” AR 241. She further reported, “I usually don’t make it to the toilet in
6 time when I urinate, and 2–3 times a week I defecate on my diaper.” AR 242. She
7 was taking Nortriptyline to treat IBS. AR 248.

8 • June 2017: Plaintiff told Dr. Keehn that she experienced anxiety-related
9 incontinence. AR 1348.

10 • July 2017: Plaintiff told QME Dara Saghafi, M.D., that taking Nortriptyline
11 had improved her IBS-related diarrhea and she had “much less accidents.”⁶ AR
12 1358. While she used to have episodes two or three times weekly, it had improved
13 to “once a week or less.” AR 1358. She also reported that she “frequently urinates
14 at nighttime.” AR 1360; see also AR 1550 (Nortriptyline improvement of diarrhea
15 continued in September 2017).

16 • July 2017: Plaintiff saw Dr. Sanford for a urological consultation. AR
17 1454. Plaintiff’s chief complaint was “urinary urgency and urge incontinence.”
18 AR 1455. Since starting medication for IBS, her fecal incontinence had improved
19 and only occurs three to four times a month. AR 1455. Her urinary symptoms
20 worsened with stress, and she required three to five diapers per day. AR 1455. She
21 was “asked to fill out a 24-hour voiding diary.” AR 1458. Dr. Sanford
22 recommended Kegel exercises. AR 1458.

23 • September 2017: When Plaintiff returned for a follow-up appointment with
24 Dr. Sanford, she did not bring her voiding diary and reported that she had not done
25

26 ⁶ In May 2017, Plaintiff reported to the SSA that Nortriptyline had side
27 effects including “constipation, blurred vision, muscle stiffness, [and] nightmares,”
28 but in July 2017, Plaintiff told Dr. Saghafi that she was experiencing no side effects
from Nortriptyline. Compare AR 248, with AR 1359.

1 any Kegel exercises.⁷ AR 1462. Her symptoms had worsened, and she changed
2 her diapers five to six times per day. AR 1462. She was not seeing a psychologist
3 on a regular basis. AR 1463. She scheduled a nerve stimulation treatment to
4 address urinary incontinence. AR 1463.

5 • November 2017: Plaintiff told Dr. Sanford that she wanted to discontinue
6 the nerve stimulation treatment after one session, because it did not help and the
7 drive to the doctor’s office was too stressful; she was still using five diapers daily.
8 AR 1465–66. She had started seeing a psychologist, but she was not taking anti-
9 depressant or anti-anxiety medication. AR 1466. Dr. Sanford recommended
10 surgical intervention to address her urinary incontinence, which Plaintiff declined.
11 AR 1467, 1501.

12 • May 2018: Dr. Davidson wrote another QME report. AR 1499. Plaintiff
13 reported diarrhea “4 times a day 2 to 3 times a week,” but she did not have bowel
14 movements every day. AR 1501. She took Pepto Bismol which was “effective in
15 controlling her bowel habits however she gets nauseated with it.” AR 1501. Dr.
16 Davidson continued to recommend avoiding “undue or extreme stress” as the only
17 work restriction. AR 1515.

18 • February 2019: Plaintiff told Dr. Saghafi that Floranex twice a day “helps
19 her diarrhea and IBS ‘so much.’ About 60% of her bowel movements are now
20 normal” and her “bouts of diarrhea ... are overall significantly improved.” AR
21 1524; see also AR 1547 (IBS symptoms continued improving in April 2019). She
22 reported using three to four pads a day for urinary incontinence and “is happy about
23 them.” AR 1525.

24 • March 2019: Plaintiff told Kaiser that she was “not interested in any
25 medications for anxiety and depression.” AR 2665.

27
28 ⁷ No party cited voiding diary records in the AR, and the Court saw none.

1 • April 2019: Plaintiff started treatment with a new therapist at Kaiser. Her
2 subjective complaints did not include anxiety-related incontinence. AR 2772–73.

3 At the hearing in July 2019, Plaintiff testified that she could not predict when
4 she would need to use the bathroom and still had “a lot of accidents.” AR 44. She
5 testified that she had daily issues with bowel and bladder incontinence that had
6 worsened since 2014. AR 45–46. When she felt the need to go to the bathroom,
7 she needed to go immediately, but she still had accidents “all the time.” AR 46.
8 She reported using five or six undergarments per day. AR 46. On some days, she
9 used the bathroom 10 or 15 times. AR 47. She believed there was “most
10 definitely” a relationship between her incontinence and anxiety. AR 47. She felt
11 her symptoms were worse due to the financial stress of not working. AR 52.

12 In all the medical records, the parties did not cite and the Court did not find
13 any medical source who indicated that Plaintiff needed to take an urgent bathroom
14 break during her appointment, although some appointments lasted one to two hours.

15 b. Summary of Relevant Administrative Proceedings.

16 The VE testified that if a hypothetical worker were off-task 15% of the time,
17 that would preclude employment. AR 60. Similarly, showing up 15 or 30 minutes
18 late four to five times per month would preclude employment. AR 61. If a worker
19 needed to take unscheduled breaks that totaled 4 hours per week (or about 10% of a
20 40-hour workweek), that would also preclude employment. AR 61. Regarding
21 bathroom breaks, the VE testified that a hypothetical worker doing the Alternative
22 Jobs could take hourly, unscheduled breaks, but they would need to be limited to
23 about six minutes. AR 62. If bathroom break time reached 15 minutes every 1.5
24 hours (i.e., about 17% of work time), then that would preclude employment. AR
25 63.

26 The ALJ found that Plaintiff had the RFC to work so long as she had “ready
27 access” to a bathroom. AR 21. Thus, the ALJ implicitly found that the time
28 required for Plaintiff’s bathroom breaks would not exceed the work-preclusive

1 limits established by the VE’s testimony. Plaintiff now argues that the ALJ’s
2 finding lacks substantial evidentiary support. (JS at 10, 12–13.)

3 c. The ALJ’s RFC Is Supported by Substantial Evidence.

4 In the social security disability benefits context, a normal workday
5 contemplates a morning, lunch, and afternoon break. Learnaham v. Astrue, No.
6 2:09-cv-01143, 2010 U.S. Dist. LEXIS 93121, at *18–19, 2010 WL 3504936, at *5
7 (E.D. Cal. Sep. 1, 2010); see SSR 96-9p, 1996 WL 374185, at *6, 1996 SSR
8 LEXIS 6, at *17 (noting that a normal workday contemplates “a morning break, a
9 lunch period, and an afternoon break at approximately 2-hour intervals”); see also
10 Programs Operations Manual System (“POMS”) DI 24510.005(C)(2)(b) (“Consider
11 an 8-hour workday and a 5 day work week (with normal breaks, e.g., lunch,
12 morning and afternoon breaks) in evaluating the ability to sustain work-related
13 functions.”). A worker can use the bathroom during any of these breaks, as well as
14 before and after work, without being off-task during working hours. As a result,
15 one cannot simply compare the total estimated time required for daily bathroom
16 breaks to an eight-hour workday to see if it would exceed 15%.

17 In her briefing, Plaintiff does not attempt to perform this kind of calculation
18 or any other to support her argument. Instead, she summarily argues that she will
19 be off-task, late, or absent more than the VE allowed. (JS at 10, 22–23.)

20 A review of the medical records summarized above, however, demonstrates
21 that the ALJ had reasons to conclude Plaintiff was exaggerating the severity of the
22 functional limitations caused by her incontinence. Over the years between 2015
23 and 2017 during which she purportedly experienced worsening symptoms of IBS
24 and fecal incontinence, she declined to try an over-the-counter remedy like
25 Metamucil. AR 1252, 1473. When she did take medication, her IBS symptoms
26 improved to the point where she only experienced diarrhea once a week. AR 1358,
27 1455, 1501, 1524. This suggests that her diarrhea and fecal incontinence were not
28 as disabling during this period as she alleges.

1 Plaintiff did not start to complain of anxiety-related urinary incontinence
2 until years after she stopped working. AR 1251. While she attributed her urinary
3 incontinence to anxiety, she was often neither enrolled in counselling nor taking
4 medication to address her anxiety. AR 1463, 1466, 2665. Despite Dr. Sanford’s
5 recommendations, she did not submit a voiding diary or do Kegel exercises. AR
6 1462. Dr. Sanford declined to find Plaintiff disabled from a urological perspective
7 for purposes of workers’ compensation law. AR 1458, By February 2019, she was
8 wearing three to four pads daily to protect against leaks from urinary incontinence,
9 and she told Dr. Saghafi that she was “happy” with that solution. AR 1525. This is
10 not consistent with someone who is disabled by urinary incontinence.

11 But even starting with Plaintiff’s testimony that some days she needed to use
12 the bathroom 10 to 15 times (AR 47), and assuming that she can use the bathroom
13 before and after work, during her morning and afternoon breaks, and twice during
14 her lunch hour, then she would need to use the bathroom about four to nine times
15 during working hours. This is roughly once per each of the eight hours in a typical
16 workday, which the VE testified would not preclude work, so long as each
17 bathroom break did not exceed six minutes. AR 62.

18 Plaintiff has not provided evidence of the average length of her bathroom
19 breaks. Plaintiff identifies no evidence that lengthy bathroom visits are typical for
20 her or that occasional longer visits, perhaps after a fecal accident, could not often be
21 accomplished during nonworking hours. See Taylor v. Astrue, No. C12-1069, 2013
22 U.S. Dist. LEXIS 22311, at *12–13, 2013 WL 607436, at *4 (W.D. Wash. Jan. 28,
23 2013) (finding no reversible error where claimant failed to present evidence of
24 functional limitations, i.e., the need for frequent bathroom breaks, caused by his
25 Crohn’s disease).

26 Again, by finding that Plaintiff could work if she had “ready access” to a
27 bathroom, the ALJ implicitly found that Plaintiff would not require bathroom
28 breaks of frequency or duration beyond the limits established by the VE’s

1 testimony. Plaintiff has failed to demonstrate that this finding lacks substantial
2 evidentiary support.

3 **5. Sub-Issue 1(e): Ready Bathroom Access.**

4 Dr. Sanford restricted Plaintiff to work with “ready access to a clean
5 restroom.” AR 1458, 1467. The ALJ used Dr. Sanford’s wording but attempted to
6 quantify “ready access” by stating, “Must have ready access to a bathroom,
7 meaning that a bathroom must be within a few minutes’ walk.” AR 21. Plaintiff
8 argues that this does not adequately accommodate her incontinence. (JS at 9–10.)

9 Plaintiff does not suggest an alternative meaning for “ready access.” The
10 ALJ included in the hypothetical posed to the VE the requirement that the worker
11 “have ready access to a bathroom meaning that the bathroom must be within a few
12 minutes’ walk.” AR 59. Plaintiff’s counsel could have asked the VE what she
13 understood “a few minutes’ walk” to mean, the amount of time required to walk to
14 the bathroom at most job sites, and if employers with more remote bathrooms
15 typically allow bathroom breaks to exceed six minutes. While Plaintiff’s counsel
16 actively probed the VE, he did not ask any of these questions. AR 60–63. Now,
17 Plaintiff makes a conclusory argument that this restriction “simply fails to
18 contemplate the combination of this Plaintiff’s physical impairments and
19 symptoms” without explaining how so. (JS at 10.) If Plaintiff is arguing that
20 “ready access” means less than a “few minutes’ walk,” she provides no evidence
21 that Dr. Sanford found her incontinence that limiting.⁸ Thus, Plaintiff has failed to
22 demonstrate legal error.

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⁸ In other cases, VEs have testified that while “ready access” to a bathroom
26 means that the bathroom is located within “a reasonable walking distance, [f]or
27 example, 30 to 60 seconds,” “most jobs have this type of bathroom access.” E.g.,
28 Martha W. v. Comm’r, Soc. Sec. Admin., No. 6:19-CV-01251, 2020 WL 7047308,
at *6, 2020 U.S. Dist. LEXIS 223726, at *18 (D. Or. Nov. 29, 2020).

1 **6. Sub-Issue 1(f): Exertional Restrictions.**

2 Plaintiff argues that the ALJ erred by failing to include any exertional
3 restrictions in her RFC. (JS at 9.) This is only harmful error if Plaintiff had
4 exertional limitations that would preclude her from doing the Alternative Jobs. As
5 discussed above, the DOT rates the table worker job as sedentary. AR 28, 59 (DOT
6 739.687-182.) Plaintiff points to no evidence suggesting that she cannot do the
7 exertional demands of sedentary work. Again, Plaintiff has failed to demonstrate
8 error.

9 **B. ISSUE TWO(a): Plaintiff's Subjective Testimony.**

10 Plaintiff argues that the ALJ “failed to cite anything other than her perception
11 that the subjective statements and testimony are not supported by the objective
12 evidence as justification for rejecting” Plaintiff’s testimony. (JS at 19.) Not so.
13 The ALJ partially discounted Plaintiff’s subjective symptom testimony for multiple
14 other reasons.⁹

15 First, the ALJ found Plaintiff’s testimony inconsistent with her activities.
16 AR 25. The ALJ contrasted Plaintiff’s testimony that she mostly stayed home (AR
17 44) with medical records showing that she traveled regularly to Northern California
18 to visit her boyfriend and engaged in other travel.¹⁰ AR 25, citing AR 1028
19 (October 2016 record stating that Plaintiff’s boyfriend “now lives in No CA while
20 [Plaintiff] lives here and they alternate trips every other week for visits”) and AR
21 1682 (September 2017 record stating that Plaintiff “is going out of town for a while
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23 ⁹ The ALJ did not completely discount Plaintiff’s subjective symptom
24 testimony. While the ALJ gave Dr. Keehn’s opinion “some weight,” the ALJ
25 concluded that “some additional limitations are warranted to accommodate
26 [Plaintiff’s] subjective complaints.” AR 24.

27 ¹⁰ Plaintiff suggests there is no inconsistency because the ALJ did not
28 question Plaintiff about these trips and give her an opportunity to explain. (JS at
19.) The trips are documented in Plaintiff’s medical records which are substantial
evidence. AR 1028, 1682.

1 this Sunday”). The ALJ also cited psychological evaluations in 2015 and 2016
2 during which Plaintiff reported relatively normal activities of daily living. AR 23,
3 25, citing AR 1349 (Plaintiff could live by herself, do household chores, run
4 errands, shop, cook, manage her own money, care for pet cats, and pursue coloring
5 as a hobby), AR 3203 (Plaintiff could drive, run errands, cook, clean, shop, dine
6 out, and visit with family) and AR 323 (Plaintiff could drive, run errands, cook,
7 clean, shop, eat out twice per month, use a computer, care for her cats, spend time
8 with her boyfriend, and visit her adult son and parents).

9 Second, the ALJ noted that Plaintiff had declined various forms of
10 recommended treatment for her mental and physical impairments. AR 24–25.
11 Despite claiming disabling anxiety (AR 39, 47 [hearing]), Plaintiff had long gaps
12 without mental health counselling (AR 1595–3200, 3342–76) and was not taking or
13 expressed disinterest in anti-anxiety medication (AR 1463, 1466, 2665) and other
14 forms of treatment, despite improving when she did obtain treatment. See AR 1135
15 (December 2013 Kaiser record describing Plaintiff’s “ongoing work concerns” and
16 “sense of being singled out or otherwise picked on,” but she “did not keep
17 psychotherapy appointment, seems to feel no need for such”); AR 328 (December
18 2016 workers’ compensation record stating that Plaintiff reported her “symptoms of
19 depression and anxiety have significantly subsided” since March 2016 after
20 receiving “a course of mental health treatment”); AR 2133–34 (March 2018 Kaiser
21 9:30 a.m. record declining 2:00 p.m. mental health appointment because “Kaiser
22 never helps her and it takes too long for her to get help”); AR 2761 (March 2019
23 Kaiser record stating that Plaintiff “declined to schedule IOP [intensive outpatient
24 psychiatric services] until her schedule cleared up”). Plaintiff discontinued therapy
25 that might have helped her urinary incontinence after one session, claiming that the
26 drive was too stressful (AR 1465–66) and she also declined surgical intervention
27 (AR 1467, 1501).

1 Thus, the ALJ gave at least two other clear and convincing reasons, both
2 supported by substantial evidence, for partially discounting Plaintiff’s subjective
3 symptom testimony.

4 **C. ISSUE TWO(b): Plaintiff’s Mother’s Subjective Statements.**

5 On May 4, 2017, Plaintiff’s Mother R. G. completed a third-party function
6 report. AR 227–34. R. G. reported that Plaintiff was “basically a shut in” due to
7 her “severe anxiety.” AR 227. She observed that Plaintiff “had no social life,” was
8 stressed out even by being with family members, and “prefers to keep to herself and
9 stay home” such that R. G. needed to check on her weekly and bring her food. AR
10 232.

11 The ALJ summarized these statements. AR 26. The ALJ then contrasted it
12 with Plaintiff’s statements to medical sources about her social life and ability to live
13 independently. AR 26. The ALJ cited records in which Plaintiff reported she could
14 drive, shop, cook, and perform household chores. AR 26, citing AR 323, 1349.
15 The ALJ also cited records describing Plaintiff’s travel every other week to visit her
16 boyfriend. AR 1028, 1034 (couples counselling record noting that Plaintiff and her
17 boyfriend had been in a relationship for more than four years).

18 An ALJ can reject lay witness testimony for a germane reason supported by
19 substantial evidence. Valentine v. Comm’r Soc. Sec. Admin., 574 F.3d 685, 694
20 (9th Cir. 2009) (“When an ALJ discounts the testimony of lay witnesses, he or she
21 must give reasons that are germane to each witness.”) (citation omitted). Here, the
22 inconsistency between R. G.’s description of Plaintiff’s functional limitations and
23 Plaintiff’s actual activities, as reported by Plaintiff and observed by treating
24 medical sources, provides such a reason. See Molina v. Astrue, 674 F.3d 1104,
25 1122 (9th Cir. 2012) (because “the lay testimony described the same limitations as
26 Molina’s own testimony, ... the ALJ’s reasons for rejecting Molina’s testimony
27 apply with equal force to the lay testimony”); Valentine, 574 F.3d at 694 (“In light
28 of our conclusion that the ALJ provided clear and convincing reasons for rejecting

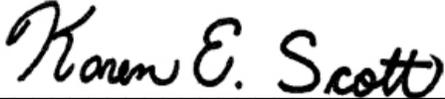
1 Valentine's own subjective complaints, and because Ms. Valentine's testimony was
2 similar to such complaints, it follows that the ALJ also gave germane reasons for
3 rejecting her testimony.").

4 **IV.**

5 **CONCLUSION**

6 For the reasons stated above, IT IS ORDERED that the decision of the
7 Commissioner shall be AFFIRMED. Judgment shall be entered consistent with this
8 order.

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10 DATED: June 3, 2021

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KAREN E. SCOTT
13 United States Magistrate Judge
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