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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

KONNI KATHLEEN ELLEN,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 1:16-cv-01196-SAB

ORDER DENYING PLAINTIFF’S SOCIAL  
SECURITY APPEAL

(ECF Nos. 14, 15, 16)

**I.**

**INTRODUCTION**

Plaintiff Konni Kathleen Ellen (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for disability benefits pursuant to the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Stanley A. Boone.<sup>1</sup>

Plaintiff suffers from Hashimoto’s Disease, plantar fasciitis, shoulder pain, premature ovarian failure, osteoporosis, psoriasis, psoriatic arthritis, degenerative disc disease and affective disorder. For the reasons set forth below, Plaintiff’s Social Security appeal shall be denied.

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<sup>1</sup> The parties have consented to the jurisdiction of the United States Magistrate Judge. (See ECF Nos. 6, 8.)

1 **II.**

2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 Plaintiff protectively filed an application for a period of disability and disability insurance  
4 benefits on December 11, 2012. (AR 102.) Plaintiff's application was initially denied on July 5,  
5 2013, and denied upon reconsideration on December 3, 2013. (AR 143-145, 147-151.) Plaintiff  
6 requested and received a hearing before Administrative Law Judge William J. King, Jr., ("the  
7 ALJ"). Plaintiff appeared for a video hearing on December 18, 2014. (AR 33-102.) On January  
8 27, 2015, the ALJ found that Plaintiff was not disabled. (AR 14-26.) The Appeals Council  
9 denied Plaintiff's request for review on June 15, 2016. (AR 1-4.)

10 **A. Relevant Hearing Testimony**

11 Plaintiff testified at a video hearing on December 18, 2014. (AR 39-47, 49-89; 92-93.)  
12 Plaintiff was born on June 11, 1970. (AR 39.) Plaintiff is married and lives with her husband.  
13 (AR 39.) Plaintiff has insurance through her husband who is employed. (AR 39.) Plaintiff  
14 received unemployment benefits after she was laid off in March of 2005. (AR 40.) Plaintiff has  
15 a driver's license and drives. (AR 40.) Plaintiff has a high school diploma and has attended two  
16 years of college, although she did not receive a college degree. (AR 40.) Plaintiff is still  
17 attending college. (AR 40.) Plaintiff received a certificate in bookkeeping in 2006, but never  
18 worked as a bookkeeper. (AR 41.) Plaintiff has never had a job that lasted more than a year  
19 since she was laid off in 2005. (AR 46.)

20 Plaintiff took college classes with the intent of going into nursing, but with her health  
21 issues is looking into other areas to find something that she can do. (AR 41.) Plaintiff did not  
22 currently have a major. (AR 41.)

23 Plaintiff last worked three or four weeks prior to the hearing. (AR 41.) Starting the end  
24 of May 2014, Plaintiff worked for Reading Cinemas as a supervisor directing snack bar  
25 employees. (AR 41, 43.) She was handling cash deposits, working on the registers, serving  
26 customers. (AR 41-42.) She would be on her feet for the majority of the shift which was about  
27 90 percent of the time. (AR 42, 44.) Plaintiff would handle from 5 to 25 pounds and would ask  
28 for help if it was heavier than that. (AR 44.) Plaintiff was working while she was in college and

1 was supposed to only be working one day per week per her doctor's note. (AR 42.) She worked  
2 a seven and a half hour shift. (AR 42.) Her doctor put her off work for a month in August and  
3 then she went back to work. (AR 83.) Plaintiff quit because they were demanding that she work  
4 more than one day per week. (AR 43.)

5 When Plaintiff went back to work she was hoping to be able to work three to four days a  
6 week, but found she could not get out of bed until the next shift. (AR 84.) That was when Dr.  
7 Trussel took her off work and she went back with the agreement that she would only work one  
8 day per week because it was interfering with her homework. (AR 84.)

9 While she was working Plaintiff was going to school for six hours or less two days per  
10 week. (AR 44-45.) Plaintiff was also doing homework two hours per day five days a week.  
11 (AR 45.) Plaintiff would do her homework for twenty minutes and then take a break to put  
12 dishes in the dishwasher or something that did not require her to sit before going back to her  
13 homework. (AR 85.) The regular school year was August through December and January  
14 through May. (AR 45.) Plaintiff was also taking classes during the summer. (AR 45.) Plaintiff  
15 has been attending school fulltime on and off since she was laid off. (AR 46.) The last year she  
16 could handle a fulltime semester was 2011. (AR 45.)

17 Prior to working at the Cinema, Plaintiff had worked one or two days for Quadknoff in  
18 2012. (AR 43.) She attended two training classes for safety and then worked one day in the  
19 field. (AR 46.) Plaintiff worked as a surveyor. (AR 43.) She would walk through the foothills  
20 where Chevron and other oil companies were going to put a drilling site surveying for  
21 endangered species. (AR 43-44.) When she took the job she did not realize how physical it was  
22 and they were working in the heat and fire suits. (AR 44.) There were no bathrooms and after a  
23 day of working she could not get out of bed. (AR 44.)

24 Plaintiff also worked part-time as receptionist for three months at a retirement home.  
25 (AR 92.)

26 The summer prior to that Plaintiff worked at a convenience store. (AR 47.) Her primary  
27 goal was to finish school to start her career. (AR 47.) Plaintiff was looking for jobs during this  
28 time that were similar to her skill set rather than her education. (AR 47.) About three years

1 prior, Plaintiff volunteered a couple of times at Friends of Kern County Animal Control. (AR  
2 77.) She used to attend their events. (AR 77.) She would talk to people about spaying and  
3 neutering their animals. (AR 78.)

4 Plaintiff filed for disability in the summer of 2012 after she quit working for Quadknoff  
5 because her psoriasis went from being on the back of her scalp to covering her whole body. (AR  
6 87.) She developed pustular psoriasis on her hand and the bottoms of her feet. (AR 87.) It is a  
7 painful condition that is under more control now. (AR 87.) However, Plaintiff still has psoriasis  
8 on the palms of her hands and feet. (AR 87.) She tries not to wash her hands unless she has to  
9 because it can cause cracking and bleeding. (AR 87.) When Plaintiff was working at the movie  
10 theater her thumbs or the palms of her hands would be cracked and bleeding when she was  
11 working the concession stand. (AR 87.)

12 Plaintiff has inflammatory arthritis that causes problems with her right and left hands.  
13 (AR 49.) Plaintiff has a tendency to drop things with her left hand because of the pain. (AR 49-  
14 50.) She also has swelling in the right thumb joint and the middle finger of her left hand. (AR  
15 50.) Plaintiff has stiffness, swelling, and flare-ups. (AR 51.) Plaintiff has times when her  
16 symptoms are better and times when they are worse. (AR 51.) She has been having this  
17 condition with her hands since 2010. (AR 51.) The frequency and duration of the flare-ups has  
18 gotten worse since 2010. (AR 51.) When the symptoms started it was just a nuisance, but now  
19 Plaintiff has trouble writing. (AR 51.) It never goes away, but at times it is worse and writing  
20 causes it to flare-up. (AR 52.) Using a keyboard does not cause it flare-up, but using a mouse  
21 does. (AR 52.) Plaintiff's hand pain ranges from a 2 or 3 to 7 out of 10. (AR 52-53.) Avoiding  
22 activity with her hand causes the symptoms to subside. (AR 53.) Plaintiff will also put cold  
23 packs on her hands for five minutes at a time. (AR 53.)

24 Plaintiff's biggest problem is her back. (AR 53.) She has had problems with her back  
25 since she was in her teens. (AR 53.) Plaintiff has stiffness and soreness if she does a lot of  
26 sitting. (AR 54.) Plaintiff's back pain ranges from 4 or 5 to 9 out of 10 at its worst. (AR 54.)  
27 Prolonged sitting aggravates her back pain. (AR 54.) When she was working at the theater her  
28 back would hurt when she sat to count money. (AR 55.) Plaintiff's back pain was also

1 aggravated by bending, lifting, and stooping. (AR 55.) It is also aggravated by washing dishes  
2 or cutting up vegetables. (AR 56.) A good night's sleep will alleviate her pain somewhat and  
3 also avoiding whatever activity caused her back to start hurting. (AR 55.) When Plaintiff was  
4 doing homework she would quit or only do twenty minutes at a time, in class she would get up  
5 and stand up. (AR 55.)

6 Plaintiff also has had problems with her left foot since 2009. (AR 56.) Plaintiff has a  
7 nerve issue where the left toes join the foot. (AR 56-57.) Her foot pain ranges from 1 or 2 to 7  
8 or 8 out of 10. (AR 57.) Her foot pain is made worse by walking when wearing shoes that are  
9 not orthotic. (AR 58.) Not putting pressure on the foot relieves the pain. (AR 58.) Dr.  
10 Zimmerman did an MRI and wanted to do surgery. (AR 57.)

11 Plaintiff has had a burning sensation on the left side of her ribs since the beginning of  
12 summer. (AR 58.) They have improved since she started back on the Humira shots. (AR 58.)

13 Plaintiff suffers fatigue which she has been told is from her thyroid. (AR 85.) She is  
14 scheduled to have a cyst in her neck drained on February 10. (AR 85.) Plaintiff was just  
15 diagnosed with interstitial cystitis. (AR 88.) It is a painful condition that requires her to watch  
16 what she eats. (AR 88.)

17 Plaintiff has suffered from depression since her teens. (AR 59.) The symptoms get better  
18 and worse, but are worse as the panic attacks have increased the last two and a half years. (AR  
19 59.) Plaintiff's depression causes her to not want to leave the house. (AR 59.) She will have  
20 suicidal thoughts. (AR 60.) She does not socialize and does not have friends. (AR 60.)  
21 Plaintiff has panic attacks, self-isolation, and suicidal thoughts. (AR 60.) Plaintiff also has  
22 anxiety that goes with her panic attacks. (AR 60.)

23 On some days, Plaintiff is afraid to leave the house because she is afraid she will have a  
24 panic attack or feels one coming on. (AR 60.) Plaintiff has a panic attack at least once a week  
25 because the medication she is taking to prevent them is actually causing her to have panic  
26 attacks. (AR 61.) The length of her panic attack depends on the environment and if she realizes  
27 it is happening she can remove herself from the situation and get it under control before it is full  
28 blown. (AR 61.) It takes her one to two minutes to get a panic attack under control if it is not

1 full blown. (AR 61.) When she has a full blown attack she will get on the ground and her  
2 husband will get the phone to call 9-1-1. (AR 61.) But, he has never had to call 9-1-1. (AR 61.)  
3 Most of the time Plaintiff is able to limit her panic attacks to a few minutes. (AR 61.) Last year  
4 Plaintiff had an attack in class and they stopped class and she had to be taken to the clinic. (AR  
5 62.) At the clinic, they put her on oxygen and checked to make sure she was not having heart  
6 issues. (AR 62.) Plaintiff has not had another attack at school due to her understanding of how  
7 to deal with them and she has actually walked away and avoided going to class. (AR 62.) Since  
8 September, Plaintiff has missed three days of class. (AR 62.) Plaintiff is unable to attend school  
9 fulltime due to her panic attacks. (AR 63.)

10 Plaintiff is able to maintain As when she takes one class at a time. (AR 63.) The last  
11 time Plaintiff went to school fulltime was in the fall of 2011 or spring of 2012. (AR 64.)  
12 Fulltime would be 12 units or more which would be three to four classes. (AR 64.) Plaintiff  
13 started taking one class at a time due to her panic attacks and back pain. (AR 65.) Plaintiff  
14 attended a class where she received tutoring because she qualified under the student's with  
15 disabilities program. (AR 86.) Plaintiff took a one day CPR class last year. (AR 86.)

16 Plaintiff sees a rheumatologist for her arthritis, an endocrinologist, a chiropractor, a  
17 family practitioner, a naturopathic doctor, a urologist, and a psychiatrist. (AR 66-67, 88.)  
18 Plaintiff sees her rheumatologist every three months. (AR 67.) She is prescribed Humira and  
19 her husband gives her injections at home. (AR 68.) Plaintiff went for a year without seeing the  
20 endocrinologist and just started seeing her again. (AR 68.) She is seeing her every one to two  
21 months. (AR 68.) The endocrinologist is monitoring Plaintiff's pituitary and thyroid. (AR 68.)  
22 Plaintiff sees her chiropractor two to three times per week for manipulations. (AR 68-69.)  
23 Plaintiff sees her family practitioner once a month and is being referred to physical therapy. (AR  
24 69.) Plaintiff started seeing a psychiatrist in April of this year and sees him once a month. (AR  
25 70-71.) Several years ago, Plaintiff received mental health treatment at Kaiser and had treatment  
26 on and off in her teens and 20s. (AR 70.) She also has seen a marriage and family therapist once  
27 or twice a month for five years. (AR 70.) Plaintiff was going to physical therapy for her foot  
28 and back but her sessions ran out and she will start again in January. (AR 71.)

1 Plaintiff was going to school twice a week for one class before the semester finished.  
2 (AR 72.) Plaintiff has signed up for one class for the upcoming semester. (AR 72.) Plaintiff's  
3 class is supposed to last three hours a day, but the teacher was letting them out after an hour and  
4 a half. (AR 72.) Plaintiff is supposed to do 12 hours of homework per week at a minimum. (AR  
5 72.) Plaintiff generally goes to bed around 8 or 9. (AR 73.) She wakes up when the sun comes  
6 up but tries to go back to sleep. (AR 73.) Sometimes she is able to go back to sleep and  
7 sometimes she cannot. (AR 73.) Plaintiff gets up around 8 or 9. (AR 73.) Plaintiff will make  
8 herself a smoothie for breakfast. (AR 73-74.) If she is not going to school she will lie down and  
9 watch television. (AR 74.)

10 Plaintiff has two dogs and she cleans up after them. (AR 74.) Plaintiff walks the smaller  
11 dog. (AR 74.) Some weeks she walks the dog two or three times, other weeks not at all. (AR  
12 74.) Sometimes they walk a couple of blocks to her mother-in-law's house and then will sit and  
13 rest for a bit before walking back home. (AR 74.) If Plaintiff cannot make it back home her  
14 husband will come pick her up or her mother-in-law will take her home. (AR 74-75.) Plaintiff  
15 joined a gym and had gone four times since January. (AR 75.) Plaintiff joined a bowling league  
16 in March, but had to quit after going four times. (AR 75-76.) Her back and tendinitis in her  
17 right shoulder flared up. (AR 76.) Plaintiff took an adaptive fitness class three times at school.  
18 (AR 76.) It was designed for people who have problems and they are able to do as little or as  
19 much as they can during the class. (AR 76.)

20 Plaintiff does not do a very good job taking care of her house. (AR 77.) Her husband or  
21 her mother-in-law will help her. (AR 77.) Plaintiff sometimes cooks and her husband helps.  
22 (AR 77.) Plaintiff has a small garden box in which she grows herbs. (AR 77.) She will water it  
23 once in a while, but it has an automatic sprinkler so she does not have to very often. (AR 77.)

24 Plaintiff goes to movies that are back-pain worthy. (AR 78.) Most of the time she waits  
25 for the movie to come out on video so she can either lie down or sit because she is not  
26 comfortable going to a movie theater and sitting. (AR 78.) When they go out to dinner, Plaintiff  
27 asks for a booth so she can adjust herself and sit in a way to minimize her back pain. (AR 79.)  
28 Plaintiff does not go to church or her husband's sporting events. (AR 78.) Plaintiff does not

1 socialize with friends, but does socialize with her mother-in-law. (AR 78.) Plaintiff is not  
2 spending as much time with her sisters because they have chronic mental illness and she cannot  
3 handle being around them. (AR 78.)

4 Plaintiff will go to the grocery store on her way home or between doctor's appointments.  
5 (AR 79.) She leaves her purse in the car because it hurts her back to carry it through the store.  
6 (AR 79.) If Plaintiff goes for a major trip, such as to Costco, her husband goes with her to lift  
7 the heavy items. (AR 79.) Plaintiff goes to the big shops once a week with her husband for an  
8 hour. (AR 79.)

9 Plaintiff is able to lift 15 pounds but cannot lift 25 pounds. (AR 80.) If her foot is not  
10 flaring up, Plaintiff can stand for two to three hours. (AR 80.) At the theatre, she was on her  
11 feet for seven and a half hours and her foot would flare up within the first couple hours. (AR  
12 81.) Her foot would then hurt for 24 hours. (AR 81.) Plaintiff is able to walk for several blocks  
13 before needing to rest. (AR 81.) Sometimes Plaintiff is only able to sit for fifteen minutes and  
14 other times she can sit for an hour. (AR 82.) Plaintiff has problems bending at the knees and at  
15 the waist. (AR 82.) Plaintiff can climb stairs as long as she has a handrail. (AR 82.)

16 A vocational expert, Kathleen Spencer, also testified at the hearing. (AR 90-100.)

17 **B. ALJ Findings**

18 The ALJ found that Plaintiff met the requirements to remain insured through June 30,  
19 2014 and must establish disability on or before that date to be entitled to a period of disability or  
20 disability benefits. (AR 17.) The ALJ made the following findings of fact and conclusions of  
21 law.

- 22 • Plaintiff last met the insured status requirements of the Social Security Act on June 30,  
23 2014.
- 24 • Plaintiff did not engage in substantial gainful activity during the period from her alleged  
25 onset date of June 22, 2012 through her date last insured of June 30, 2014.
- 26 • Through the date last insured, Plaintiff had the following severe impairments:  
27 degenerative disc disease and affective disorder.
- 28 • Through the date last insured, Plaintiff did not have an impairment or combination of





1 months.” 42 U.S.C. § 423(d)(1)(A). The Social Security Regulations set out a five step  
2 sequential evaluation process to be used in determining if a claimant is disabled. 20 C.F.R. §  
3 404.1520; Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1194 (9th  
4 Cir. 2004). The five steps in the sequential evaluation in assessing whether the claimant is  
5 disabled are:

6 Step one: Is the claimant presently engaged in substantial gainful activity? If so,  
7 the claimant is not disabled. If not, proceed to step two.

8 Step two: Is the claimant’s alleged impairment sufficiently severe to limit his or  
9 her ability to work? If so, proceed to step three. If not, the claimant is not  
10 disabled.

11 Step three: Does the claimant’s impairment, or combination of impairments, meet  
12 or equal an impairment listed in 20 C.F.R., pt. 404, subpt. P, app. 1? If so, the  
13 claimant is disabled. If not, proceed to step four.

14 Step four: Does the claimant possess the residual functional capacity (“RFC”) to  
15 perform his or her past relevant work? If so, the claimant is not disabled. If not,  
16 proceed to step five.

17 Step five: Does the claimant’s RFC, when considered with the claimant’s age,  
18 education, and work experience, allow him or her to adjust to other work that  
19 exists in significant numbers in the national economy? If so, the claimant is not  
20 disabled. If not, the claimant is disabled.

21 Stout v. Commissioner, Social Sec. Admin., 454 F.3d 1050, 1052 (9th Cir. 2006).

22 Congress has provided that an individual may obtain judicial review of any final decision  
23 of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g).  
24 In reviewing findings of fact in respect to the denial of benefits, this court “reviews the  
25 Commissioner’s final decision for substantial evidence, and the Commissioner’s decision will be  
26 disturbed only if it is not supported by substantial evidence or is based on legal error.” Hill v.  
27 Astrue, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence” means more than a  
28 scintilla, but less than a preponderance. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996)  
(internal quotations and citations omitted). “Substantial evidence is relevant evidence which,  
considering the record as a whole, a reasonable person might accept as adequate to support a  
conclusion.” Thomas v. Barnhart, 278 F.3d 947, 955 (9th Cir. 2002) (quoting Flaten v. Sec’y of  
Health & Human Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)).

“[A] reviewing court must consider the entire record as a whole and may not affirm

1 simply by isolating a specific quantum of supporting evidence.” Hill, 698 F.3d at 1159 (quoting  
2 Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir. 2006). However, it is not  
3 this Court’s function to second guess the ALJ’s conclusions and substitute the court’s judgment  
4 for the ALJ’s. See Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (“Where evidence is  
5 susceptible to more than one rational interpretation, it is the ALJ’s conclusion that must be  
6 upheld.”).

#### 7 IV.

#### 8 DISCUSSION AND ANALYSIS

9 Plaintiff contends that the ALJ erred in rejecting the opinion of consultative examiner,  
10 Nancy Nikkel, Ph.D. who opined that Plaintiff had a Global Assessment of Function (“GAF”)  
11 Score<sup>2</sup> of 50 and did not take into consideration her “fair to poor” mental limitations and  
12 therefore the Residual Functional Capacity (“RFC”) is under inclusive of her mental limitations.  
13 Plaintiff also argues that the ALJ’s assessment of Plaintiff’s activities of daily living leaves much  
14 to be desired.

15 Defendant counters that the ALJ properly evaluated Dr. Nikkel’s opinion and is not  
16 required to adopt all of Dr. Nikkel’s findings. Defendant contends that the ALJ provided a  
17 specific and legitimate reason to reject the GAF finding and properly relied on the opinions of  
18 the reviewing doctors who found that the the RFC was consistent with Dr. Nikkel’s opinion.

19 Plaintiff responds that the fair to poor findings by Dr. Nikkel is commensurate with a  
20 moderate to marked degree of functional loss and there is no evidence to permit performance of  
21 simple work activities as the ALJ assessed in the RFC. Plaintiff argues that the agency opinions  
22 actually contradict the opinion of Dr. Nikkel.

#### 23 A. Legal Standard

24 The weight to be given to medical opinions depends upon whether the opinion is  
25 proffered by a treating, examining, or non-examining professional. See Lester v. Chater, 81 F.3d

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26 <sup>2</sup> “A Global Assessment of Functioning (“GAF”) score is the clinician’s judgment of the individual’s overall level of  
27 functioning. It is rated with respect only to psychological, social, and occupational functioning, without regard to  
28 impairments in functioning due to physical or environmental limitations.” Cornelison v. Astrue, 2011 WL 6001698,  
at \*4 n.6 (C.D. Cal. Nov. 30, 2011) (citing American Psychiatric Association, Diagnostic and Statistical Manual of  
Mental Disorders (“DSM–IV”), at 32 (4th ed.2000)).

1 821, 830-831 (9th Cir. 1995). “Generally, the opinions of examining physicians are afforded  
2 more weight than those of non-examining physicians, and the opinions of examining non-  
3 treating physicians are afforded less weight than those of treating physicians. Orn v. Astrue, 495  
4 F.3d 625, 631 (9th Cir. 2007) (citing 20 C.F.R. § 404.1527(d)(1)-(2)). “If a treating or  
5 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only reject  
6 it by providing specific and legitimate reasons that are supported by substantial evidence.”  
7 Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014) (citing 20 C.F.R. § 404.1527(d)(3)). The  
8 contrary opinion of a non-examining expert is not sufficient by itself to constitute a specific,  
9 legitimate reason for rejecting a treating or examining physician’s opinion, however, “it may  
10 constitute substantial evidence when it is consistent with other independent evidence in the  
11 record.” Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). The ALJ need not accept  
12 the opinion of any physician that is brief, conclusory, and unsupported by clinical findings.  
13 Thomas, 278 F.3d at 957.

14 **B. The ALJ provided Legitimate and Specific Reasons to Reject Dr. Nikkel’s**  
15 **GAF Assessment**

16 Dr. Nikkel did a comprehensive psychiatric examination of Plaintiff on June 13, 2013.  
17 (AR 371-377.) Plaintiff drove herself to the appointment and arrived early. (AR 371.)  
18 Plaintiff’s attitude was appropriate during the interview. (AR 371.) Plaintiff endorsed  
19 symptoms of depression and anxiety. (AR 371.) Plaintiff reported that her symptoms began as a  
20 teenager and they were pretty severe. (AR 371.) Plaintiff stated that she remembered banging  
21 her head against the wall trying to hurt herself. (AR 371.) Plaintiff also reported a family  
22 history of depression and that sometimes her symptoms are better and sometimes they are worse.  
23 (AR 372, 373.)

24 Plaintiff reported depressed mood, anhedonia, weight changes, sleep problems, fatigue,  
25 feelings of worthlessness and guilt, difficulty concentrating and thinking, and thoughts of death.  
26 (AR 372.) Plaintiff stated that she was feeling more helpless lately and that she had begun to  
27 have panic attacks. (AR 372.) Plaintiff reported her panic attacks occur once a week. (AR 372.)  
28 Her symptoms include chest pain and shortness of breath. (AR 372.) Plaintiff also reported

1 experiencing numbness in her arms. (AR 372.) She reported that she can feel the panic attacks  
2 coming on and can control them better now. (AR 372.) Plaintiff states that her symptoms occur  
3 daily and they are worse than when they first began. (AR 372.) Plaintiff described her  
4 depression as moderate to severe and she has been treated with medication and counseling. (AR  
5 372.)

6 Plaintiff claimed to have been in counseling all her life. (AR 372.) She started receiving  
7 counseling when she was fourteen and is currently receiving counseling once a week. (AR 372.)  
8 She has been on and off psychiatric medications since she first started treatment at age 14. (AR  
9 372.) Plaintiff is currently trying to treat her psychiatric symptoms holistically. (AR 372.)

10 Plaintiff reported that she attended high school through twelfth grade and received her  
11 diploma at adult school. (AR 373.) She denied receiving special education classes in high  
12 school. (AR 373.) Plaintiff has been attending Bakersfield College for a while and has  
13 completed approximately two years of classes. (AR 373.) Plaintiff wanted to pursue nursing but  
14 does not know if she can physically handle the job. (AR 373.)

15 Plaintiff reported significant employment history including managing fast food  
16 restaurants from the ages of 19 to 22. (AR 373.) Plaintiff then managed a shoe store for seven  
17 years. (AR 373.) Plaintiff managed a movie theater for five years and a swap meet until she was  
18 laid off when it closed. (AR 373.) Plaintiff's more recent work history is less stable. (AR 373.)  
19 She worked from 2007 to 2008 as a sales person. (AR 373.) In 2009, Plaintiff worked as a  
20 receptionist. (AR 373.) Plaintiff left the job because she thought she had another job but it did  
21 not pan out. (AR 373.) The previous summer Plaintiff worked for three days as a surveyor, but  
22 the work was too physical in the heat. (AR 373.)

23 Plaintiff reported that she gets up between 8 and 8:30 and will attempt to do normal  
24 activities such as cleaning, cooking, and laundry. (AR 373.) Plaintiff's mother-in-law and  
25 husband help when they can. (AR 373.) Plaintiff goes to class at Bakersfield College. (AR  
26 374.) If she is having a depressed day she will go to her sisters or her mother-in-law's house  
27 because she does not want to be alone. (AR 374.) Plaintiff will sometimes watch a movie or  
28 television. (AR 374.) Plaintiff denied having any current hobbies. (AR 374.) Plaintiff reported

1 that she had to quit a job two year's prior because she had panic attacks. (AR 374.) Plaintiff  
2 used to volunteer at animal rescue, but does not feel that she can handle the job anymore. (AR  
3 374.) Plaintiff spends time on Facebook. (AR 374.) Plaintiff reports that she does not feel well,  
4 does not want to be around anyone, and is trying to force herself to get better and to get out of  
5 the house. (AR 374.)

6 Plaintiff's hygiene was good and her eye contact was appropriate. (AR 374.) Her  
7 attitude was cooperative and motor activity was unremarkable. (AR 374.) Plaintiff's thought  
8 processes were tight, logical, and goal-oriented. (AR 374.) Speech form was normal in rate and  
9 pace with relevant content. (AR 374.) Articulation was clear, and velocity and volume were  
10 normal. (AR 374.) Plaintiff denied psychotic symptoms and there were no indications of  
11 hallucinations or delusions. (AR 374.) Plaintiff denied suicidal or homicidal ideation but her  
12 thought content included themes of hopelessness. (AR 374.)

13 Plaintiff reported her mood as depressed. (AR 374.) Affect was congruent with stated  
14 mood and constricted. (AR 374.) Plaintiff reported that her sleep was poor and she was having  
15 trouble falling and staying asleep. (AR 374.) Plaintiff reported that her appetite was okay and  
16 decreased. (AR 374.)

17 Plaintiff was oriented in all spheres. (AR 374.) Her immediate and past memory were  
18 intact, and recent memory was fair. (AR 374-375.) Plaintiff's fund of knowledge was within  
19 normal limits. (AR 375.) Plaintiff was able to perform simple mathematical calculations  
20 correctly. (AR 375.) Plaintiff's concentration was within normal limits. (AR 375.) Plaintiff  
21 had difficulty differentiating appropriately. (AR 375.) Plaintiff's judgment and insight were  
22 fair. (AR 375.)

23 Plaintiff was diagnosed with major depressive disorder, recurrent, severe; panic disorder  
24 without agoraphobia; and a GAF of 50.<sup>3</sup> (AR 375-376.) Dr. Nikkel found that Plaintiff appeared  
25 to respond to questions in an open and honest manner and did not appear to be exaggerating

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26 <sup>3</sup> A GAF range of 41–50 reflects “[s]erious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent  
27 shoplifting) or any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep  
28 a job).” Vanbibber v. Carolyn, No. C13-546-RAJ, 2014 WL 29665, at \*1 (W.D. Wash. Jan. 3, 2014) (quoting  
American Psychiatric Association, Diagnostic & Statistical Manual of Mental Disorders Multiaxial Assessment 30,  
32 (4th ed. Text rev. 2000) (DSM-IV)).

1 symptoms or that there were inconsistencies throughout the examination. (AR 376.) Plaintiff's  
2 symptoms were found to be severe. (AR 376.) Plaintiff's problem is treatable but the likelihood  
3 of recovery is poor. (AR 376.) Given the chronic nature of her mental health condition, Dr.  
4 Nikkel opined that it was unlikely to improve within the next 12 months. (AR 376.)

5 Dr. Nikkel opined that Plaintiff is capable of managing her own funds. (AR 377.)  
6 Plaintiff has the ability to perform simple and repetitive tasks as well as detailed and complex  
7 tasks. (AR 377.) Plaintiff has a fair ability to accept instructions from supervisors and interact  
8 with co-workers and the public, as evidenced by her work history and depressed affect. (AR  
9 377.) Plaintiff is able to perform work activities on a consistent basis without special or  
10 additional instruction. (AR 377.) Plaintiff has good ability to maintain regular attendance in the  
11 workplace. (AR 377.) Plaintiff has a fair to poor ability to complete a normal  
12 workday/workweek without interruptions from a psychiatric condition and is not able to deal  
13 with the usual stress encountered in a competitive workplace, as evidenced by the severity of her  
14 symptoms of depression and anxiety. (AR 377.)

15 The ALJ considered Dr. Nikkel's opinion that Plaintiff had a fair to poor ability to  
16 complete a normal workday or workweek without interruptions from a psychiatric condition, fair  
17 ability to accept instructions from supervisors and coworkers and the public, and is not able to  
18 deal with the usual stress encountered in a competitive workplace. (AR 23.) The ALJ also  
19 considered the GAF score of 50, stating that a rating of 41-50 reflects serious impairment in  
20 social, occupational or school functioning, and a rating of 51-60 reflects moderate limitations in  
21 social, occupational, or school functioning. (AR 23.) The ALJ found that Plaintiff's activities of  
22 daily living indicate greater functioning than is reflected in a GAF score of 50. (AR 24.)

23 The ALJ considered that Plaintiff reported that she was able to clean, cook, and is  
24 independent with her activities of daily living. (AR 23, 364.) While Plaintiff argues that the  
25 ALJ ignored the fact that she is able to do these things at her own pace, there is other evidence  
26 that the ALJ relied on to show that her daily activities indicate greater functioning than found by  
27 Dr. Nikkel.

28 Plaintiff is taking a class at Bakersfield College. (AR 23, 374.)

1 In September 2013, Plaintiff reported that she got a second dog and was walking a lot  
2 with her dog. (AR 23, 602.) Plaintiff argues that she is not individually responsible for the dogs  
3 and the report says she is “walking with them.” Plaintiff reported on September 16, 2013, that  
4 she got a second dog in July, who is very active and she is walking a lot with them. (AR 602.)  
5 The ALJ reasonably found that Plaintiff was referring to the dogs when she stated “them,” and  
6 not another person. Similarly, Plaintiff testified at the hearing that sometimes they walk a couple  
7 of blocks to her mother-in-law’s house and then will sit and rest for a bit before walking back  
8 home. (AR 74.) If Plaintiff cannot make it back home her husband will come pick her up or her  
9 mother-in-law will take her home. (AR 74-75.) The evidence does support the ALJ’s  
10 interpretation that Plaintiff was walking a lot with her dogs.

11 The ALJ also considered that Plaintiff had worked after her alleged onset date. (AR 23.)  
12 The ALJ found that Plaintiff was trapping feral cats for money in April 2013. (AR 23.) On May  
13 31, 2013, Plaintiff reported that she was considering trapping cats again for money, which does  
14 indicate that she was previously doing this work. (AR 418.)

15 The ALJ also noted that Plaintiff was working part-time in September 2012. (AR 23.)  
16 On November 16, 2012, Plaintiff reported that she started school and a new job in the same week  
17 and was taking two classes. (AR 550, 551.)

18 The ALJ noted that Plaintiff was also working in July 2014. (AR 23.) On July 15, 2014,  
19 Plaintiff reported that she was very busy as a supervisor at her job, “ ‘Non stop hell on wheels’  
20 running everywhere, walking on concrete.” (AR 645.) Plaintiff reported that she did not want to  
21 have to leave work. (AR 646.) It gives her somewhere to go and something to do and she likes  
22 being there although it is very hard on her body. (AR 646.)

23 The ALJ provided specific and legitimate reasons to reject the opinion of Dr. Nikkel that  
24 Plaintiff’s symptoms were severe that are supported by substantial evidence in the record.

25 **C. The ALJ Properly Relied on the Agency Physicians’ Opinions Which Found**  
26 **the RFC to be Consistent with Dr. Nikkel’s Opinion**

27 Plaintiff also argues that the inconsistency with Dr. Nikkel’s opinion is apparent because  
28 Dr. Nikkel found that Plaintiff had “fair to poor” ability to complete a normal



1 workday/workweek without interruptions from her psychiatric symptoms and an inability to deal  
2 with the usual stress encountered in a competitive workplace. Dr. Nikkel's findings are not a  
3 residual functional capacity assessment, but those findings are used to determine Plaintiff's  
4 residual functional capacity assessment.

5 Contrary to Plaintiff's assertion, it is not apparent that Dr. Nikkel's opinion is  
6 inconsistent with the ALJ's findings. Dr. Nikkel opined that Plaintiff had a "fair to poor" ability  
7 to complete a normal workday/workweek without interruptions from her psychological  
8 symptoms. As Plaintiff and the ALJ realized Dr. Nikkel's opinion placed some of Plaintiff's  
9 limitations right at the cusp between moderate and severe/marked. As discussed above, the ALJ  
10 provided legitimate and specific reasons to determine that Plaintiff's symptoms were not severe,  
11 but were moderate. "Where the evidence is susceptible to more than one rational interpretation,  
12 one of which supports the ALJ's decision, the ALJ's conclusion must be upheld." Thomas, 278  
13 F.3d at 954.

14 Further, the ALJ gave the greatest weight to the state agency medical consultant opinions  
15 finding that they were consistent with the objective medical findings and Plaintiff's activities of  
16 daily living and the consultative examination. (AR 24.) The weight to be afforded a non-  
17 examining physician's opinion depends upon the degree to which the physician provides  
18 supporting explanations for his opinion. Garrison, 759 F.3d at 1012 (citing 20 C.F.R. §  
19 404.1527(d)(3)).

20 On June 26, 2013, Dr. Kelly reviewed the medical record and found that Plaintiff had  
21 mild restrictions to activities of daily living; and moderate difficulties in maintaining social  
22 functioning and concentration, persistence, and pace. (AR 112.) Dr. Kelly gave great weight to  
23 Dr. Nikkel's opinion because it was consistent with totality of evidence and it provided the most  
24 recent and comprehensive exam. (AR 113.) Dr. Kelly found the opinion evidence about  
25 limitations and restrictions was consistent with the totality of the evidence. (AR 113.) Dr. Kelly  
26 conducted a Mental Residual Functional Capacity Assessment. (AR 116-118.) Dr. Kelly found  
27 that Plaintiff was not significantly limited in her ability to carry out very short and simple  
28 instructions, to perform activities within a schedule, maintain regular attendance, and be punctual

1 within customary tolerances, to work in coordination with or in proximity to others without  
2 being distracted by them, and was moderately limited in her ability to carry out detailed  
3 instructions, maintain concentration and pace for extended periods, sustain ordinary routine  
4 without special supervision, and ability to complete a normal workday and workweek without  
5 interruptions from psychologically based symptoms and to perform at a consistent pace without  
6 an unreasonable number and length of rest periods. (AR 116-117.)

7 Dr. Kelly found that Plaintiff's ability to interact appropriately with the general public,  
8 ask simple questions or requests, get along with coworkers and per without distracting them or  
9 exhibiting behavioral extremes and maintain socially appropriate behavior and to adhere to basic  
10 standards of neatness and cleanliness were not significantly limited. (AR 117.) Plaintiff's ability  
11 to accept instructions and respond appropriately to criticism from supervisors was moderately  
12 limited. (AR 117.)

13 Dr. Kelly found that Plaintiff was not significantly limited in her ability to be aware of  
14 normal safety hazards and take normal precautions, and travel in unfamiliar places or use public  
15 transportation. (AR 117.) Plaintiff was moderately limited in her ability to respond  
16 appropriately to changes in the work setting, and set realistic goals or make plans independent of  
17 others. (AR 117) Plaintiff's limitations arose from mood and anxiety symptoms. (AR117.)

18 Dr. Kelly opined that after review, the overall medical evidence of record supports an  
19 unskilled mental rating. (AR 118.) There is medical evidence of record where Plaintiff has  
20 mood and sleep disorder diagnoses. (AR 118.) There is no formal mental health medical  
21 evidence of record other than the June 2013 consultative examination. (AR 118.) Dr. Kelly  
22 found that although Plaintiff may have some problems, there is no objective evidence that she  
23 cannot engage in simple, routine, repetitive tasks where contact is minimal. (AR 118.) Dr.  
24 Nikkel notes that Plaintiff is capable of performing simple/detailed tasks, has fair ability to  
25 accept instructions, and is able to maintain attendance. (AR 118.) Activities of daily living  
26 show some impairment but Plaintiff is functional. (AR 118.)

27 Dr. Kelly noted that at the consultative examination, Plaintiff reports she does chores,  
28 cooks, cleans, attends college, and interacts with others. (AR 118.) Plaintiff's activity of daily

1 living submitted show the claimant attends to hygiene, cooks, cleans, drives, goes out alone,  
2 shops, and manages money. (AR 118.) Dr. Kelly opined that Plaintiff is able to perform work  
3 where interpersonal contact is incidental to work performed, e.g. assembly work; complexity of  
4 tasks is learned and performed by rote, few variables, little judgment; and supervision required is  
5 simple, direct and concrete (unskilled). (AR 118.) Dr. Kelly gave great weight to the opinion  
6 evidence from Dr. Nikkel's June 2013 consultative examination finding the opinion evidence  
7 about Plaintiff's limitations and restrictions is consistent with the totality of the evidence and  
8 with the findings in this rating. (AR 118.)

9 Similarly, on November 29, 2013, Dr. Bradley reviewed the record on reconsideration  
10 and found that Dr. Nikkel's opinion evidence about Plaintiff's limitations and restrictions is  
11 consistent with the totality of the evidence and the findings in this rating. (AR 138.) While  
12 Plaintiff argues that the residual functional capacity assessment did not contain all limitations  
13 opined by Dr. Nikkel, the residual functional capacity findings need not be identical to the  
14 relevant limitations but must be consistent with them. Turner v. Comm'r of Soc. Sec., 613 F.3d  
15 1217, 1223 (9th Cir. 2010). "[A]n ALJ's assessment of a claimant adequately captures  
16 restrictions related to concentration, persistence, or pace where the assessment is consistent with  
17 restrictions identified in the medical testimony." Stubbs-Danielson v. Astrue, 539 F.3d 1169,  
18 1174 (9th Cir. 2008).

19 While Plaintiff ultimately is arguing that the RFC fails to adequately capture all her  
20 mental limitations, the ALJ relied on the medical opinions of the agency physicians who both  
21 opined that the RFC is consistent with the limitations opined by Dr. Nikkel. The Court finds that  
22 the ALJ did not err in determining that Plaintiff maintained the ability to perform tasks that can  
23 be learned in less than 30 days involving no more than simple, short instructions, and simple  
24 work-related decisions with few work place changes and can perform work in which  
25 interpersonal contact is incidental to work performed.

26 **V.**

27 **CONCLUSION AND ORDER**

28 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's appeal from the

1 decision of the Commissioner of Social Security is DENIED. It is FURTHER ORDERED that  
2 judgment be entered in favor of Defendant Commissioner of Social Security and against  
3 Plaintiff Konni Kathleen Ellen. The Clerk of the Court is directed to CLOSE this action.

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5 IT IS SO ORDERED.

6 Dated: August 16, 2017

  
UNITED STATES MAGISTRATE JUDGE

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