

1 Plaintiff filed timely objections to the Findings and Recommendations, asserting the
2 magistrate judge erred in finding the ALJ properly evaluated the medical opinion of Dr. Stoltz,
3 and maintains the ALJ failed to properly account for Plaintiff’s need for hourly breaks. (Doc. 34
4 at 2-3.) Plaintiff also contends the magistrate judge erred in “finding that the ALJ properly
5 evaluated Plaintiff’s subjective complaints.” (*Id.* at 3, emphasis omitted.) Therefore, Plaintiff
6 contends the Court should reject the recommendations of the magistrate judge. (*Id.* at 4.)

7 Dr. Stoltz performed a consultative examination on Plaintiff, after which Dr. Stoltz opined
8 Plaintiff “does not have any limits with sitting, standing or walking except that he should be
9 allowed a rest break every one hour.” (Doc. 14-2 at 270.) The ALJ rejected the opinion that
10 Plaintiff required hourly rest breaks, finding the opinion was “not sufficiently particular regarding
11 the amount of time the claimant should rest every one hour;” was “not consistent with his
12 objective findings and with his opinion that the claimant does not have any limits with sitting,
13 standing or walking;” relied upon the subjective reports of Plaintiff; and “the totality of the
14 evidence does not support his opinion.” (*Id.* at 317-318.) As the magistrate judge found, with
15 considering these factors, the ALJ carried the burden to identify specific and legitimate reasons²
16 for rejecting the limitation identified by Dr. Stoltz. *See, e.g., Batson v. Comm’r of the Soc. Sec.*
17 *Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2003) (ALJ may reject an opinion when it is “unsupported
18 by the record as a whole”); *Tommasetti v. Astrue*, 533 F.3d at 1035, 1041 (9th Cir. 2008) (an ALJ
19 may reject an opinion based upon “a claimant’s self-reports that have been properly discounted as
20 not credible”); *Khounesavatdy v. Astrue*, 549 F.Supp.2d 1281, 1229 (E.D. Cal. 2008) (“it is
21 appropriate for an ALJ to consider ... the inconsistency of conclusions with the physician’s own
22 findings, in rejecting a physician’s opinion”).

23 ² The opinion of a treating physician may be rejected whether it is contradicted by another. *Magallanes v. Bowen*,
24 881 F.2d 747, 751 (9th Cir. 1989). An ALJ may reject the contradicted opinion of a physician with “specific and
25 legitimate” reasons, supported by substantial evidence in the record. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
26 1996); *see also Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002). Because the opinion of Dr. Stolz was
27 contradicted by the opinions of Drs. Georgis, Williams, and Liger—who did not identify a need for hourly rest
28 breaks—the ALJ was required to identify specific and legitimate reasons to reject the limitation. When there is
conflicting medical evidence, “it is the ALJ’s role to determine credibility and to resolve the conflict.” *Allen v.*
Heckler, 749 F.2d 577, 579 (9th Cir. 1984). The ALJ’s resolution of the conflict must be upheld by the Court when
there is “more than one rational interpretation of the evidence.” *Id.*; *see also Matney v. Sullivan*, 981 F.2d 1016,
1019 (9th Cir. 1992) (“The trier of fact and not the reviewing court must resolve conflicts in the evidence, and if the
evidence can support either outcome, the court may not substitute its judgment for that of the ALJ”).

1 The ALJ’s rejection of the hourly rest break limitation was also supported by substantial
2 evidence in the record. Substantial evidence is “more than a mere scintilla. It means such relevant
3 evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
4 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197 (1938)).
5 Dr. Georgis performed an orthopedic examination and did not identify a rest break limitation
6 following testing that included Plaintiff’s grip strength, range of motion, muscle strength, and
7 physical examination. (Doc. 14-2 at 669-673.) Because the opinion of Dr. Georgis “rests on his
8 own independent examination,” this constitutes substantial evidence in support of the ALJ’s
9 decision to reject the hourly rest break limitation. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149
10 (9th Cir. 2001). The opinions of Drs. Williams and Liger—who reviewed the medical record and
11 did not identify an hourly rest break limitation when evaluating Plaintiff’s physical residual
12 functional capacity (Doc. 14-2 at 61-62, 79-80)—are consistent with the opinion of Dr. Georgis.
13 Therefore, the opinions of Drs. Williams and Liger also constitute substantial evidence. *See*
14 *Tonapetyan*, 242 F.3d at 1149 (the opinions of non-examining physicians “may constitute
15 substantial evidence when ... consistent with other independent evidence in the record”).

16 Finally, the ALJ found Plaintiff’s “medically determinable impairments could reasonably
17 be expected to cause the alleged symptoms.” (Doc. 14-2 at 312.) However, the ALJ found also
18 found the “statements concerning the intensity, persistence and limiting effects of these symptoms
19 are not entirely consistent with the medical evidence and other evidence in the record....” (*Id.*)
20 Because there was no evidence of malingering identified, the ALJ must identify clear and
21 convincing reasons for rejecting Plaintiff’s subjective complaints. *Lingenfelter v. Astrue*, 504
22 F.3d 1028, 1035-36 (9th Cir. 2007). In performing this step of the analysis, The ALJ noted that
23 Plaintiff testified he saw medical providers “every two weeks,” but the record did not support this
24 testimony. (*Id.* at 315.) In addition, the ALJ stated:

25 [T]he claimant’s statements about the intensity, persistence, and limiting
26 effects of his or her symptoms, they are inconsistent because he received
27 only sporadic treatment, and his objective examinations, including nerve
28 conduction studies, an electromyogram and radiographic evidence do not
support the severity of the claimant’s subjective complaints as discussed in
detail above. Furthermore, the claimant was able to provide IHHS to his
daughter, preventing her from wandering to the neighbor and around the

1 neighborhood. He was able to perform household chores and drive.
2 Furthermore, there is no evidence in the record that the claimant was
3 unable to use his hands or had any symptoms related to the finding of
4 subchondral cysts in his bilateral hands, and small radioulnar joint
5 effusion. The claimant did not undergo any treatment or physical therapy
6 for his hands, although he did appear wearing new wrist braces when he
7 saw consultative examiner, Dr. Stoltz, and his grip strength was “slightly
8 decreased symmetrically based on someone of his age and stature.”
9 (Exhibit 3F, p. 3). The claimant did not complain of any limitations in the
10 use of his hands, and his handgrip was within normal limits when he
11 underwent an orthopedic consultation with Dr. Georgis (Exhibit 14F, p. 2),
12 and his nerve conduction studies did not show any neurological
13 abnormalities (Exhibit 2F, pp. 8-10, 20- 22) . . .

14 (Doc. 14-2 at 317.) Thus, the ALJ considered that Plaintiff’s testimony regarding frequency of
15 treatment was inconsistent with the record, inconsistency with objective findings in the medical
16 records, his ability to perform household chores and care for his daughter despite testimony that
17 he did not do chores and had debilitating pain, gaps in treatment, and failure to seek treatment for
18 his hands and wrists. (*See id.* at 311-312, 315-317.) The Ninth Circuit determined these are
19 “clear and convincing” reasons for rejecting a claimant’s subjective statements. *See, e.g., Fair v.*
20 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (“failure to seek treatment ... can cast doubt on the
21 sincerity of the claimant’s pain testimony”); *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175
22 (9th Cir. 2008) (“Even where ... activities suggest some difficulty functioning, they may be
23 grounds for discrediting the claimant’s testimony to the extent that they contradict claims of a
24 totally debilitating impairment”); *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (ALJ may
25 consider whether the plaintiff made inconsistent statements concerning treatment); *Johnson v.*
26 *Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (inconsistencies with medical evidence supports a
27 rejection of a claimant's credibility); *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)
28 (“[a]lthough lack of medical evidence cannot form the sole basis for discounting pain testimony,
it is a factor that the ALJ can consider”). Given these considerations, the ALJ carried the burden
to make “a credibility determination with findings sufficiently specific to permit the court to
conclude the ALJ did not arbitrarily discredit [the] claimant’s testimony.” *Thomas v. Barnhart*,
278 F.3d 947, 958 (9th Cir. 2002).

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court conducted a de novo review of the case.
Having carefully reviewed the entire matter, including Plaintiff’s objections, the Court finds the

1 Findings and Recommendations are supported by the record and proper analysis. Because ALJ
2 applied the proper legal standards, and the decision was supported by substantial evidence in the
3 record, the administrative decision is affirmed. *See Sanchez v. Sec’y of Health & Human Serv.*,
4 812 F.2d 509, 510 (9th Cir. 1987); *see also Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
5 1992) (“The trier of fact and not the reviewing court must resolve conflicts in the evidence, and if
6 the evidence can support either outcome, the court may not substitute its judgment for that of the
7 ALJ”). Accordingly, the Court **ORDERS**:

- 8 1. The Findings and recommendations issued on February 24, 2022 (Doc. 33) are
9 **ADOPTED** in full.
- 10 2. Plaintiff’s appeal from the administrative decision of the Commissioner of Social
11 Security (Doc. 20) is **DENIED**.
- 12 3. The Commissioner’s request that the administrative decision be affirmed (Doc. 29)
13 is **GRANTED**.
- 14 4. The Clerk of the Court is directed to terminate any pending motions and deadlines,
15 and enter judgment in favor of defendant Kilolo Kijakazi, Acting Commissioner of
16 Social Security, and against plaintiff Tigran Iskenyan.

17
18 IT IS SO ORDERED.

19 Dated: March 31, 2023


UNITED STATES DISTRICT JUDGE