



1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(c), this Court has conducted a  
2 *de novo* review of the case. Having carefully reviewed the entire file, including Plaintiff’s  
3 objections, the Court finds that the findings and recommendations are supported by the record and  
4 proper analysis.

5 Plaintiff argues that the Administrative Law Judge (“ALJ”) failed to consider whether her  
6 impairments met or equaled Listing 2.03A at step three of the sequential evaluation, and the  
7 magistrate judge erred by weighing the evidence and offering a post-hac rationale as to why the  
8 evidence was insufficient. (Doc. No. 25 at 2.)

9 At step three of the sequential evaluation, the ALJ determines whether “a claimant’s  
10 impairment meets or equals an impairment listed in [20 C.F.R. part 404, subpart P, appendix 1].”  
11 Tackett v. Apfel, 180 F.3d 1094, 1099 (9th Cir. 1999). If a claimant meets or equals a listed  
12 impairment he or she will be found disabled at this step without further inquiry. Id. (citing 20  
13 C.F.R. § 404.1520(d)); see 20 C.F.R. § 416.920(d). “To *meet* a listed impairment, a claimant  
14 must establish that he or she meets each characteristic of a listed impairment relevant to his or her  
15 claim. To *equal* a listed impairment, a claimant must establish symptoms, signs and laboratory  
16 findings ‘at least equal in severity and duration’ to the characteristics of a relevant listed  
17 impairment, or, if a claimant’s impairment is not listed, then to the listed impairment ‘most like’  
18 the claimant’s impairment.” Tackett, 180 F.3d at 1099 (emphasis in original).

19 Having considered the record, the Court finds that the magistrate judge properly  
20 determined that Plaintiff has failed to meet her burden to establish the necessary criteria for listing  
21 2.03A. Tackett, 180 F.3d at 1099. Listing 2.03A requires contraction of the visual field in the  
22 better eye with: “The widest diameter subtending an angle around the point of fixation no greater  
23 than 20 degrees.” 20 C.F.R. Pt. 404, Subpt. P, Appx. 1 § 2.03A. To determine statutory  
24 blindness based on visual field loss in a claimant’s better eye under listing 2.03A, the  
25 Commissioner requires the results of a visual field test. See 20 C.F.R. Pt. 404, Subpt. P, Appx. 1  
26 § 2.00(A)(6)(c). While Plaintiff has cited to visual field test results from the consultative  
27 examiner, Dr. Samuel P. Hinton, those results were not deemed wholly reliable by the examiner  
28 himself. See AR 440-41 (“reliability 7/10” on the left eye; “reliability ?” on the right eye). As

1 indicated by the magistrate judge, the ALJ considered the examiner’s statements regarding the  
2 reliability of visual field testing. AR 29 (“In the left eye, visual field reliability was 7/10. On the  
3 right eye, visual field reliability was questionable.”). Additionally, the ALJ found at least  
4 minimally persuasive the opinion of the state agency disability consultant, Dr. A. Khong, who  
5 noted that Plaintiff’s visual functional deficits were based on subjective reports, not true objective  
6 findings. AR 32, 80 (“Keep in mind that both VA and VF are based entirely on subjective reports  
7 and are not true objective findings.”). Indeed, Dr. Khong commented that Dr. Hinton “opined  
8 that the [Visual Field] result was NOT RELIABLE and NOT CONSISTENT with the ocular  
9 findings. He noted that no [Visual Field] defect would be expected given the ocular findings.”  
10 AR 79. Because Plaintiff has been unable to demonstrate how she meets listing 2.03A by  
11 reference to valid test results, she cannot establish error.

12 Plaintiff’s remaining objections are an attempt to relitigate the matter and do not provide a  
13 basis to reject the magistrate judge’s findings and recommendations.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The findings and recommendations issued on November 18, 2022 (Doc. No. 24) are  
16 adopted in full;
- 17 2. Plaintiff’s appeal from the administrative decision of the Commissioner of Social  
18 Security is denied;
- 19 3. The Commissioner’s cross-motion for summary judgment is granted and the agency’s  
20 determination to deny benefits is affirmed; and
- 21 4. The Clerk of the Court is directed to enter judgment in favor of Defendant Kilolo  
22 Kijakazi, Acting Commissioner of Social Security, and against Plaintiff Mai Jour Her.

23 IT IS SO ORDERED.

24 Dated: April 28, 2023

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26 SENIOR DISTRICT JUDGE