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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SHARITA GRIFFIN,

No. 2:17-CV-0249-CMK

Plaintiff,

vs.

MEMORANDUM OPINION AND ORDER

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

_____ /

Plaintiff, who is proceeding with retained counsel, brings this action under 42 U.S.C. § 405(g) for judicial review of a final decision of the Commissioner of Social Security. Pursuant to the written consent of all parties, this case is before the undersigned as the presiding judge for all purposes, including entry of final judgment. See 28 U.S.C. § 636(c). Pending before the court are plaintiff’s motion for summary judgment (Doc. 18) and defendant’s cross-motion for summary judgment (Doc. 20).

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I. PROCEDURAL HISTORY

Plaintiff applied for social security benefits on December 8, 2014. In the application, plaintiff claims that disability began on October 24, 2014. Plaintiff's claim was initially denied. Following denial of reconsideration, plaintiff requested an administrative hearing, which was held on April 29, 2016, before Administrative Law Judge ("ALJ") Mary Beth O'Connor. In an August 11, 2016, decision, the ALJ concluded that plaintiff is not disabled based on the following relevant findings:

1. The claimant has the following severe impairment(s): obesity, chronic anemia, and migraines;
2. The claimant does not have an impairment or combination of impairments that meets or medically equals an impairment listed in the regulations;
3. The claimant has the following residual functional capacity: she can perform light work; the claimant can stand and or walk two hours in an eight-hour workday; sit more than six hours in an eight-hour workday; occasionally climb ramps and stairs, but never climb ladders, ropes, or scaffolds; the claimant can occasionally balance, stoop, knee [sic], crouch, and crawl; she should avoid concentrated exposure to unprotected heights and moving mechanical parts; and
4. Considering the claimant's age, education, work experience, residual functional capacity, and vocational expert testimony, the claimant can perform her past relevant work as a cashier and customer service representative.

18 After the Appeals Council declined review on December 1, 2016, this appeal followed.
19

II. STANDARD OF REVIEW

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21 The court reviews the Commissioner's final decision to determine whether it is:
22 (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a
23 whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). "Substantial evidence" is
24 more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521
25 (9th Cir. 1996). It is "... such evidence as a reasonable mind might accept as adequate to
26 support a conclusion." Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole,

1 including both the evidence that supports and detracts from the Commissioner's conclusion, must
2 be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones
3 v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The court may not affirm the Commissioner's
4 decision simply by isolating a specific quantum of supporting evidence. See Hammock v.
5 Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative
6 findings, or if there is conflicting evidence supporting a particular finding, the finding of the
7 Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987).
8 Therefore, where the evidence is susceptible to more than one rational interpretation, one of
9 which supports the Commissioner's decision, the decision must be affirmed, see Thomas v.
10 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal
11 standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th
12 Cir. 1988).

14 III. DISCUSSION

15 In her motion for summary judgment, plaintiff argues that the ALJ failed to
16 properly evaluate the medical opinions. The weight given to medical opinions depends in part on
17 whether they are proffered by treating, examining, or non-examining professionals. See Lester v.
18 Chater, 81 F.3d 821, 830-31 (9th Cir. 1995). Ordinarily, more weight is given to the opinion of a
19 treating professional, who has a greater opportunity to know and observe the patient as an
20 individual, than the opinion of a non-treating professional. See id.; Smolen v. Chater, 80 F.3d
21 1273, 1285 (9th Cir. 1996); Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987). The least
22 weight is given to the opinion of a non-examining professional. See Pitzer v. Sullivan, 908 F.2d
23 502, 506 & n.4 (9th Cir. 1990).

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1 In addition to considering its source, to evaluate whether the Commissioner
2 properly rejected a medical opinion the court considers whether: (1) contradictory opinions are
3 in the record; and (2) clinical findings support the opinions. The Commissioner may reject an
4 uncontradicted opinion of a treating or examining medical professional only for “clear and
5 convincing” reasons supported by substantial evidence in the record. See Lester, 81 F.3d at 831.
6 While a treating professional’s opinion generally is accorded superior weight, if it is contradicted
7 by an examining professional’s opinion which is supported by different independent clinical
8 findings, the Commissioner may resolve the conflict. See Andrews v. Shalala, 53 F.3d 1035,
9 1041 (9th Cir. 1995). A contradicted opinion of a treating or examining professional may be
10 rejected only for “specific and legitimate” reasons supported by substantial evidence. See Lester,
11 81 F.3d at 830. This test is met if the Commissioner sets out a detailed and thorough summary of
12 the facts and conflicting clinical evidence, states her interpretation of the evidence, and makes a
13 finding. See Magallanes v. Bowen, 881 F.2d 747, 751-55 (9th Cir. 1989). Absent specific and
14 legitimate reasons, the Commissioner must defer to the opinion of a treating or examining
15 professional. See Lester, 81 F.3d at 830-31. The opinion of a non-examining professional,
16 without other evidence, is insufficient to reject the opinion of a treating or examining
17 professional. See id. at 831. In any event, the Commissioner need not give weight to any
18 conclusory opinion supported by minimal clinical findings. See Meanel v. Apfel, 172 F.3d 1111,
19 1113 (9th Cir. 1999) (rejecting treating physician’s conclusory, minimally supported opinion);
20 see also Magallanes, 881 F.2d at 751.

21 Regarding the medical opinions, the ALJ stated:

22 As for the opinion evidence, the State agency found claimant capable of
23 lifting and carrying 20 pound [sic] occasionally, 10 pounds frequently;
24 standing and walking two hours in an eight-hour workday; sit more than
25 six hours on a sustained basis in an eight-hour workday; and occasionally
26 climb ramps and stairs, balance, stoop, kneel, crouch, and crawl, but never
climb ladders, ropes, or scaffolds. The undersigned afford [sic] great
weight to this portion of the opinion, because it accounts for the claimant’s
severe impairments of obesity and anemia, and consistent [sic] with the
longitudinal evidence. The undersigned affords little weight to the State

1 agency consultant's opinion that the claimant is limited to simple
2 repetitive tasks for two hour increments as it is not supported by the
3 longitudinal records. Thus, the undersigned afford [sic] partial weight to
4 the opinion as a whole.

5 In April 2015, claimant attended an internal medicine consultative
6 examination with Roger Wagner, M.D., who reported edema in the distal
7 half of the left calf and the left foot with some slight darkish discoloration
8 and minimal thickening of the skin consistent with venous congestion;
9 however, the edema in the foot was essentially non-pitting. She was able
10 to walk on toes and heels, had a negative Romberg test, and normal gait
11 and station (Exhibit 8F/5). The examiner was of the opinion that the
12 claimant could lift and carry 50 pounds occasionally, 25 pounds frequently
13 with no postural, manipulative, or environmental limitations. The
14 undersigned afford [sic] little weight to this opinion in light of the
15 longitudinal evidence supports more limits [sic].

16 The claimant's treating physician, Jon D. Froyd, D.O., provided various
17 medical source statements (Exhibits 14F; 15F; 20F; 22F). He indicated
18 that the claimant cannot do "normal work duties," requires a dark
19 environment, frequent rests, also limited claimant to sitting, standing, and
20 walking one hour in an eight-hour workday, all similar in various
21 opinions. The undersigned affords little weight to these opinion [sic] as
22 the treatment notes and objective findings do not support these
23 conclusions. Additionally, Dr. Froyd does not provide specific abilities
24 and limits. The claimant's daily activities and statements contradict
25 sitting, standing, and walking for a total of one hour. At the hearing,
26 claimant testified she sits most of the day. The consultative examination
also contradicts these opinions.

16 In December 2015, claimant's treating physician, Roxanne Fiscella, M.D.,
17 completed a State disability form certifying disability (Exhibit 16F/13-17).
18 The undersigned affords little weight to this opinion as the criteria and
19 evaluation of disability are different under the State Disability Program.
20 Additionally, there are no details regarding claimant's abilities or
21 limitations.

22 In April 2016, Dr. Fiscella completed a medical source statement (Exhibit
23 19F). She reported the claimant was able to lift and carry 10 pounds
24 maximum about 2-3 hours over an 8 hour day; and sit, stand, and walk 15
25 minutes each, at a time. The undersigned affords little weight to this
26 opinion, because there are minimal details regarding claimant's abilities
and limitations, the treatment record do [sic] not support this conclusion,
and the claimant had only a few visits with minimal findings. There are
no objective finds [sic] to support back limitations and or limitations due
to her thyroid problem. She is not compliant with taking her medication,
anemia not acute during time Dr. Fiscella was treating her, and no
objective findings were noted to support breathing problems. This opinion
also is contradicted by the findings and opinion of the consultative
examiner.

1 Claimant's treating physician Walailuk Chaiyarat, M.D., completed a
2 medical source statement, in April 2016 (Exhibit 21F). Dr. Chaiyarat was
3 of the opinion that the claimant could lift and carry a maximum of 10
4 pounds occasionally; and sit, stand, and walk a total of 20 minutes in an 8
5 hour workday. Little weight is given to this opinion, because there are
6 minimal details regarding claimant [sic] abilities and limitations, treatment
7 record do [sic] not support this conclusion, and had only a few visits with
8 Dr. Chaiyarat with minimal findings. There is no objective evidence to
9 support back restrictions, no indication that the claimant's thyroid is
10 limiting, and claimant was not compliant with taking medications. Her
11 activities of daily living and statements also contradict the limitation to
12 sitting, standing, and walking 20 minutes total. And the consultative
13 examiner contradicts this opinion.

8 Although claimant's mental health impairment was found nonsevere, the
9 record contains a psychological consultative examination report from
10 Philip M. Cushman, Ph.D. (Exhibit 12F). At the time, testing was
11 performed demonstrating no specific memory deficits relative to her
12 intellectual function. She was diagnosed with dysthymic disorder, early
13 onset and borderline intellectual functioning with a global assessment of
14 functioning score of 65 (footnote omitted), indicating some mild mental
15 health symptoms. The examiner was of the opinion that the claimant
16 would have difficulties performing any detailed or complex tasks in a
17 work setting, but appeared capable of performing simple and repetitive
18 tasks. She would have difficulties with regular attendance and consistent
19 participation due to fatigue as well as childcare. She does not require
20 special or additional supervision; capable of following simple verbal
21 instructions from supervisors, but not complex instructions; capable of
22 getting along with supervisors, coworkers, and the general public, and
23 capable of dealing with the usual stressors encountered in a competitive
24 work environment (Exhibit 12F/8-9). The undersigned affords little
25 weight to this opinion due to the inappropriate consideration of fatigue and
26 childcare. Additionally, the exam and the longitudinal evidence does not
support the limitations of simple repetitive tasks.

19 The ALJ set forth the following regarding plaintiff's subjective complaints and
20 testimony:

21 Claimant is a younger individual. She reported she has been unable to
22 work due to thyroid cancer, anemia, migraines, left leg nerve damage,
23 arthritis in both feet, high blood pressure, blood clots, obesity, hernia, and
24 leukemia (Exhibit 2F/2). In a reconsideration appeal form, claimant
25 reported her condition became worse, because she began to experience
26 memory fog, continued migraines, anemia, and thyroid dysfunction
(Exhibit 7E/2).

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1 The claimant testified that she has back and chest pain, swelling in her
2 hands and feet, and anemia. She described pain in the lower left side of
3 her back, causing her legs to tingle and numb. She testified to being tired
4 and having migraines three or four days out of the week. She testified that
5 she take [sic] ibuprofen or prescription medication for her migraines,
6 which do not help. She stated her migraines affect her vision, causing
7 blurry vision and floater [sic]. She testified she has constant chest pain
8 from her congestive heart failure, but was only treated with blood pressure
9 medication. She testified that she was prescribed a walker and uses a
10 CPAP for her sleep apnea. The medical record establishes a diagnoses of
11 severe anemia. She had some abnormal uterine bleeding and is status post
12 hysterectomy in 2014. She has a history of a number of transfusions and
13 history of intravenous iron infusions (Exhibit 18F).

8 Regarding activities of daily living, the ALJ stated:

9 . . . [D]espite her impairments, the claimant has engaged in a somewhat
10 normal level and range of daily activity and interaction. The claimant
11 admitted activities of daily living included preparing meals, performing
12 chores, chatting with people online, spending time with family, performing
13 personal care tasks, and shopping. Some of the physical and mental
14 abilities and social interactions required in order to perform these activities
15 are the same as those necessary for obtaining and maintaining
16 employment. . . .

14 As to plaintiff's specific impairments, the ALJ described plaintiff's obesity,
15 noting her weight and height of 319 pounds and 5'4", respectively. The ALJ noted that plaintiff
16 "has been advised to attempt weight loss through improving her eating habits." See CAR at
17 Exhibit 16F.¹ The ALJ also noted that the record establishes a history of frequent migraine
18 headaches, see id. at Exhibits 13F, 14F, 16F, and 18F, but that a CT scan from 2015 was
19 negative, see id. at Exhibit 13F, and added:

20 . . . [T]he record shows establishes [sic] a history of frequent migraines;
21 however, the migraines are treated with medication. She also reported
22 having floaters in her eyes that affect her concentration, but there is only
23 one reference to this in the record and examination reports documents her
24 vision was fine (Exhibit 13F/1). Therefore, the medical evidence does not
25 support this allegation.

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25 ¹ Citations are to the Certified Administrative Record lodged on May 23, 2017
26 (Doc. 13).

1 With respect to anemia, the ALJ stated:

2 The claimant's anemia has been evaluated under Listing 7.05. Her
3 condition does not meet the clinical criteria of Listing 7.05, because the
4 record does not demonstrate A) documented painful (vaso-occlusive)
5 crises requiring parenteral (intravenous or intramuscular) narcotic
6 medication occurring at least six times within a 12-month period with at
7 least 30 days between crises OR B) complications of hemolytic anemia
8 requiring at least three hospitalizations within a 12-month period and
9 occurring at least 30 days apart, lasting at least 48 hours, including hours
10 in a hospital emergency department or comprehensive sickle cell disease
11 center immediately before the hospitalization OR C) hemoglobin
12 measurements of 7.0 grams per deciliter (g/dL) or less, occurring at least
13 three times within a 12-month period with at least 30 days between
14 measurements OR D) beta thalassemia major requiring life-long RBC
15 transfusions at least once every 6 weeks to maintain life.

16 As to leukemia, the ALJ stated:

17 The claimant's leukemia does not meet Listing 13.06. The record shows
18 claimant has a past history of myelogenous leukemia diagnosed and
19 treated when she was 7 years old and has been in remission since then
20 (Exhibit 3F/8).

21 Finally, the ALJ discussed plaintiff's alleged nerve damage:

22 In terms of the claimant's alleged medical conditions, the record shows the
23 claimant sought appropriate treatment. . . . Although she was referred to a
24 neurologist (Exhibit 14F), the medical evidence fails to show ongoing
25 treatment. She complained of neuropathy in the left leg and believed it
26 secondary to the deep venous thrombosis; however, during a consultative
27 examination, her sensation was intact. Additionally, claimant had a nerve
28 conduction study, in April 2016, showing no evidence of specific lumbar
29 radiculopathy (Exhibit 25F/2). She was prescribed the use of a walker in
30 2015 (Exhibit 24F), but there is no reference in the medical evidence that
31 she uses any assistive devices. In fact, she was noted she was easily able
32 to get up from her chair a waiting room [sic] and walk at a normal speed
33 back to the exam without assistance (Exhibit 8F/5). The physical exam
34 contradicts the need for a walker on a regular basis. Nevertheless, based
35 on the claimant's severe impairment of obesity, the undersigned limited
36 claimant to standing and or walking two hours in an eight-hour workday
37 with occasional postural activities, but never climbing ladders ropes or
38 scaffolds and should avoid concentrated exposure to unprotected heights
39 and moving mechanical parts.

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1 Plaintiff argues:

2 In this case, the ALJ provided nearly identical generalized
3 rejections for all of the treating physicians *See* Tr. 25. These non-specific
4 findings failed to explain with facts from the record why this interpretation
of the record was correct. . . .

5 Plaintiff also argues that the ALJ erred by rejecting various opinions as inconsistent with Dr.
6 Wagner’s opinion even though the ALJ afforded Dr. Wagner’s opinion minimal weight.

7 **A. State Agency Doctors**

8 On September 1, 2015, state agency consultative physician Tina Ward, M.D.,
9 offered her opinions regarding plaintiff’s physical residual functional capacity. See CAR at
10 Exhibit 5A. Plaintiff does not challenge the ALJ’s reliance on Dr. Ward’s opinions. Plaintiff
11 also does not challenge the ALJ’s rejection of the April 2015 opinion of consultative examining
12 physician, Robert Wagner, M.D., who opined that plaintiff had greater physical capabilities than
13 those found by the ALJ. See id. at Exhibit 8F. As to plaintiff’s mental impairments – none of
14 which were found to be severe – the ALJ rejected the opinion of state agency consultative
15 psychologist Laura Lochner, Ph.D., who opined on October 20, 2015, that plaintiff is limited to
16 simple repetitive tasks. See id. at Exhibit 5A. The ALJ also rejected the opinion of state agency
17 consultative examining psychologist, Phillip Cushman, Ph.D., who opined that plaintiff is limited
18 to simple repetitive tasks. See id. at Exhibit 12F. The ALJ found these opinion to be
19 inconsistent with the longitudinal record.

20 Plaintiff argues that the ALJ’s reference to inconsistency with the record as a
21 reason for rejecting the opinions of Drs. Lochner and Cushman is insufficient because it is not
22 accompanied by “citation or examples from the record showing any conflict.” While the court
23 notes that the ALJ’s analysis of the medical opinions is followed by a discussion of the medical
24 record, the court agrees with plaintiff that the ALJ erred by not explaining how any particular
25 portion of the longitudinal record is inconsistent with the opinions expressed by Drs. Lochner
26 and Cushman that plaintiff is limited to simple repetitive tasks. In this regard, the court is left to

1 guess which aspects of the longitudinal record the ALJ found to be inconsistent with the doctors'
2 opinions.

3 A review of the ALJ's discussion of the medical record confirms this conclusion
4 as none of the specific evidence cited by the ALJ seems to be inconsistent with a limitation to
5 simple repetitive tasks. Specifically, with respect to activities of daily living, the ALJ noted that
6 plaintiff is capable of "preparing meals, performing chores, chatting with people online, spending
7 time with family, performing personal care tasks, and shopping." While, as the ALJ noted,
8 "[s]ome of the physical and mental abilities and social interactions required in order to perform
9 these activities are the same as those necessary for obtaining and maintaining employment," none
10 of these daily activities necessarily indicates an ability to perform more than simple repetitive
11 tasks in a work setting. In particular, all of the activities of daily living cited by the ALJ involve
12 no more than simple repetitive tasks.

13 Though the court finds that the ALJ erred by not providing sufficient explanation
14 to support rejecting the opinions of Drs. Lochner and Cushman that plaintiff is limited to simple
15 repetitive tasks, the court agrees with defendant that the error is harmless. The Ninth Circuit has
16 applied harmless error analysis in social security cases in a number of contexts. For example, in
17 Stout v. Commissioner of Social Security, 454 F.3d 1050 (9th Cir. 2006), the court stated that the
18 ALJ's failure to consider uncontradicted lay witness testimony could only be considered
19 harmless ". . . if no reasonable ALJ, when fully crediting the testimony, could have reached a
20 different disability determination." Id. at 1056; see also Robbins v. Social Security
21 Administration, 466 F.3d 880, 885 (9th Cir. 2006) (citing Stout, 454 F.3d at 1056). Similarly, in
22 Batson v. Commissioner of Social Security, 359 F.3d 1190 (9th Cir. 2004), the court applied
23 harmless error analysis to the ALJ's failure to properly credit the claimant's testimony.

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1 Specifically, the court held:

2 However, in light of all the other reasons given by the ALJ for
3 Batson’s lack of credibility and his residual functional capacity, and in
4 light of the objective medical evidence on which the ALJ relied there was
5 substantial evidence supporting the ALJ’s decision. Any error the ALJ
6 may have committed in assuming that Batson was sitting while watching
7 television, to the extent that this bore on an assessment of ability to work,
8 was in our view harmless and does not negate the validity of the ALJ’s
9 ultimate conclusion that Batson’s testimony was not credible.

10 Id. at 1197 (citing Curry v. Sullivan, 925 F.2d 1127, 1131 (9th Cir. 1990)).

11 In Curry, the Ninth Circuit applied the harmless error rule to the ALJ’s error with respect to the
12 claimant’s age and education. The Ninth Circuit also considered harmless error in the context of
13 the ALJ’s failure to provide legally sufficient reasons supported by the record for rejecting a
14 medical opinion. See Widmark v. Barnhart, 454 F.3d 1063, 1069 n.4 (9th Cir. 2006).

15 The harmless error standard was applied in Carmickle v. Commissioner, 533 F.3d
16 1155 (9th Cir. 2008), to the ALJ’s analysis of a claimant’s credibility. Citing Batson, the court
17 stated: “Because we conclude that . . . the ALJ’s reasons supporting his adverse credibility
18 finding are invalid, we must determine whether the ALJ’s reliance on such reasons was harmless
19 error.” See id. at 1162. The court articulated the difference between harmless error standards set
20 forth in Stout and Batson as follows:

21 . . . [T]he relevant inquiry [under the Batson standard] is not
22 whether the ALJ would have made a different decision absent any error. . .
23 it is whether the ALJ’s decision remains legally valid, despite such error.
24 In Batson, we concluded that the ALJ erred in relying on one of several
25 reasons in support of an adverse credibility determination, but that such
26 error did not affect the ALJ’s decision, and therefore was harmless,
because the ALJ’s remaining reasons *and ultimate credibility determination* were adequately supported by substantial evidence in the record. We never considered what the ALJ would do if directed to reassess credibility on remand – we focused on whether the error impacted the *validity* of the ALJ’s decision. Likewise, in Stout, after surveying our precedent applying harmless error on social security cases, we concluded that “in each case, the ALJ’s error . . . was inconsequential to the *ultimate nondisability determination*.”

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1 Our specific holding in Stout does require the court to consider
2 whether the ALJ would have made a different decision, but significantly,
3 in that case the ALJ failed to provide *any reasons* for rejecting the
4 evidence at issue. There was simply nothing in the record for the court to
5 review to determine whether the ALJ’s decision was adequately supported.

6 Carmickle, 533 F.3d at 1162-63 (emphasis in original; citations omitted).

7 Thus, where the ALJ’s errs in not providing any reasons supporting a particular determination
8 (i.e., by failing to consider lay witness testimony), the Stout standard applies and the error is
9 harmless if no reasonable ALJ could have reached a different conclusion had the error not
10 occurred. Otherwise, where the ALJ provides analysis but some part of that analysis is flawed
11 (i.e., some but not all of the reasons given for rejecting a claimant’s credibility are either legally
12 insufficient or unsupported by the record), the Batson standard applies and any error is harmless
13 if it is inconsequential to the ultimate decision because the ALJ’s disability determination
14 nonetheless remains valid.

15 As defendant notes, the vocational expert in this case testified that plaintiff is
16 capable of performing her past relevant work as a cashier, which is considered unskilled work.
17 A person limited to simple repetitive tasks is capable of unskilled work. See 20 C.F.R.
18 § 404.1568(a); see also McGarrah v Colvin, 650 Fed. App’x. 480, 481 (9th Cir. 2016)
19 (unpublished). Because the ALJ’s ultimate disability determination is not affected by the error
20 with respect to Drs. Lochner and Cushman, the error is harmless.

21 **B. Treating Doctors**

22 1. Dr. Froyd

23 The ALJ rejected Dr. Froyd’s opinions that plaintiff cannot perform “normal work
24 duties,” that she can sit/stand/walk for only one hour, and that plaintiff requires frequent breaks
25 and a dark environment. As to these opinions, the ALJ stated:

26 . . . The undersigned affords little weight to these opinion [sic] as the
treatment notes and objective findings do not support these conclusions.
Additionally, Dr. Froyd does not provide specific abilities and limits. The
claimant’s daily activities and statements contradict sitting, standing, and
walking for a total of one hour. At the hearing, claimant testified she sits

1 most of the day. The consultative examination also contradicts these
2 opinions.

3 The court does not agree that the ALJ's citation to inconsistency with the
4 longitudinal record is without explanation. Unlike the ALJ's discussion of the opinions of Drs.
5 Lochner and Cushman, which failed to explain how those opinions were inconsistent with
6 specific portions of the record, the ALJ notes that Dr. Froyd's opinion that plaintiff cannot sit for
7 more than an hour is inconsistent with plaintiff's hearing testimony that she sits for most of the
8 day. Additionally, the ALJ noted that Dr. Froyd's opinion is inconsistent with Dr. Wagner's
9 findings.²

10 2. Drs. Fiscella and Chaiyarat

11 In April 2016, Dr. Fiscella opined that plaintiff could lift and carry a maximum of
12 10 pounds and that plaintiff could not sit/stand/walk for more than 15 minutes at a time. See
13 CAR at Exhibit 19F. Also in April 2016, Dr. Chaiyarat opined that plaintiff can lift and carry a
14 maximum of 10 pounds and that plaintiff can sit/stand/walk for only 20 minutes at a time. See
15 id. at Exhibit 21F. The ALJ rejected these opinions because they are not supported by sparse and
16 unremarkable treatment records and they are inconsistent with Dr. Wagner's opinions. The ALJ
17 also noted that the opinions are inconsistent with plaintiff's non-compliance with medication.

18 As with the ALJ's analysis of Dr. Froyd's opinions, and in contrast to the ALJ's
19 analysis of the opinions of Drs. Lochner and Cushman, the ALJ's reference to inconsistency with
20 the longitudinal record is accompanied by specific examples of inconsistency. The ALJ noted
21 that plaintiff's treatment with these providers was infrequent and that the objective findings
22 noted by them were unremarkable. The ALJ also noted that the opinions were inconsistent with
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24 ² Plaintiff argues that the ALJ erred by referencing Dr. Wagner's opinion even
25 though the ALJ gave little weight to that opinion. The court does not agree. The ALJ's reference
26 to Dr. Wagner's opinion does not suggest that the ALJ found the opinion to be persuasive.
Rather, the ALJ merely noted an additional inconsistency in the record with the opinion offered
by Dr. Froyd.

1 Dr. Wagner's opinion. Moreover, plaintiff's non-compliance with medication is an indication
2 that her impairments do not result in the extreme limitations opined by Drs. Fiscella and
3 Chaiyarat. The court also observes that, as with Dr. Froyd's opinion that plaintiff cannot sit for
4 more than an hour, the opinions of Drs. Fiscella and Chaiyarat that plaintiff cannot sit/stand/walk
5 for more than 15 or 20 minutes at a time is inconsistent with plaintiff's hearing testimony.

6
7 **IV. CONCLUSION**

8 Based on the foregoing, the court concludes that the Commissioner's final
9 decision is based on substantial evidence and proper legal analysis. Accordingly, IT IS HEREBY
10 ORDERED that:

- 11 1. Plaintiff's motion for summary judgment (Doc. 18) is denied;
12 2. Defendant's cross-motion for summary judgment (Doc. 20) is granted; and
13 3. The Clerk of the Court is directed to enter judgment and close this file.

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15 DATED: March 27, 2018

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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