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

NATASHIA IONE THOMAS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:19-CV-1774-DMC

MEMORANDUM OPINION AND ORDER

Plaintiff, who is proceeding with retained counsel, brings this action for judicial review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). Pursuant to the written consent of all parties, ECF Nos. 10 and 11, 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 the parties’ briefs on the merits, ECF Nos. 21 and 22.

The Court reviews the Commissioner’s final decision to determine whether it is: (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). “Substantial evidence” is more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521 (9th Cir. 1996). It is “. . . such evidence as a reasonable mind might accept as adequate to support

1 a conclusion.” Richardson v. Perales, 402 U.S. 389, 402 (1971). The record as a whole,
2 including both the evidence that supports and detracts from the Commissioner’s conclusion, must
3 be considered and weighed. See Howard v. Heckler, 782 F.2d 1484, 1487 (9th Cir. 1986); Jones
4 v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). The Court may not affirm the Commissioner’s
5 decision simply by isolating a specific quantum of supporting evidence. See Hammock v.
6 Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative
7 findings, or if there is conflicting evidence supporting a particular finding, the finding of the
8 Commissioner is conclusive. See Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987).
9 Therefore, where the evidence is susceptible to more than one rational interpretation, one of
10 which supports the Commissioner’s decision, the decision must be affirmed, see Thomas v.
11 Barnhart, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal
12 standard was applied in weighing the evidence, see Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th
13 Cir. 1988).

14 For the reasons discussed below, the matter will be remanded for further
15 proceedings.

16 17 **I. THE DISABILITY EVALUATION PROCESS**

18 To achieve uniformity of decisions, the Commissioner employs a five-step
19 sequential evaluation process to determine whether a claimant is disabled. See 20 C.F.R. §§
20 404.1520 (a)-(f) and 416.920(a)-(f). The sequential evaluation proceeds as follows:

- 21 Step 1 Determination whether the claimant is engaged in
22 substantial gainful activity; if so, the claimant is presumed
not disabled and the claim is denied;
- 23 Step 2 If the claimant is not engaged in substantial gainful activity,
24 determination whether the claimant has a severe
impairment; if not, the claimant is presumed not disabled
25 and the claim is denied;
- 26 Step 3 If the claimant has one or more severe impairments,
27 determination whether any such severe impairment meets
or medically equals an impairment listed in the regulations;
28 if the claimant has such an impairment, the claimant is
presumed disabled and the claim is granted;

1 Step 4 If the claimant's impairment is not listed in the regulations,
2 determination whether the impairment prevents the
3 claimant from performing past work in light of the
4 claimant's residual functional capacity; if not, the claimant
5 is presumed not disabled and the claim is denied;

6 Step 5 If the impairment prevents the claimant from performing
7 past work, determination whether, in light of the claimant's
8 residual functional capacity, the claimant can engage in
9 other types of substantial gainful work that exist in the
10 national economy; if so, the claimant is not disabled and
11 the claim is denied.

12 See 20 C.F.R. §§ 404.1520 (a)-(f) and 416.920(a)-(f).

13 To qualify for benefits, the claimant must establish the inability to engage in
14 substantial gainful activity due to a medically determinable physical or mental impairment which
15 has lasted, or can be expected to last, a continuous period of not less than 12 months. See 42
16 U.S.C. § 1382c(a)(3)(A). The claimant must provide evidence of a physical or mental
17 impairment of such severity the claimant is unable to engage in previous work and cannot,
18 considering the claimant's age, education, and work experience, engage in any other kind of
19 substantial gainful work which exists in the national economy. See Quang Van Han v. Bower,
20 882 F.2d 1453, 1456 (9th Cir. 1989). The claimant has the initial burden of proving the existence
21 of a disability. See Terry v. Sullivan, 903 F.2d 1273, 1275 (9th Cir. 1990).

22 The claimant establishes a prima facie case by showing that a physical or mental
23 impairment prevents the claimant from engaging in previous work. See Gallant v. Heckler, 753
24 F.2d 1450, 1452 (9th Cir. 1984); 20 C.F.R. §§ 404.1520(f) and 416.920(f). If the claimant
25 establishes a prima facie case, the burden then shifts to the Commissioner to show the claimant
26 can perform other work existing in the national economy. See Burkhart v. Bowen, 856 F.2d
27 1335, 1340 (9th Cir. 1988); Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); Hammock
28 v. Bowen, 867 F.2d 1209, 1212-1213 (9th Cir. 1989).

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II. THE COMMISSIONER'S FINDINGS

Plaintiff applied for social security benefits on May 24, 2012. See CAR 17.¹ In the application, Plaintiff claims disability began on August 30, 2008. See id. Plaintiff's claim was initially denied. Following denial of reconsideration, Plaintiff requested an administrative hearing, which was held on August 28, 2014, before Administrative Law Judge (ALJ) Mary M. French. In a March 13, 2015, decision, the ALJ concluded Plaintiff is not disabled. See CAR 17-28. After the Appeals Council declined review on July 18, 2016, Plaintiff filed an action for judicial review. See Thomas v. Berryhill, E. Dist. Cal. case no. 2:16-CV-2060-DB. Judge Barnes remanded the case. See ECF No. 21 in case no. 2:16-CV-2060-DB.

Following remand to the agency, a second administrative hearing was held before the same ALJ on December 13, 2018. See CAR 784. In a July 2, 2019, decision, the ALJ concluded plaintiff is not disabled based on the following relevant findings:

1. The claimant has the following severe impairment(s): lumbar scoliosis, bilateral carpal tunnel syndrome status post-surgical carpal tunnel releases, bipolar disorder, social anxiety disorder, and mood disorder;
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; she can lift and carry up to 10 pounds frequently and 20 pounds occasionally; she can occasionally climb ladders, ropes, and scaffolds, stoop, kneel, crouch, and crawl; she can frequently climb ramps and stairs and balance; she can occasionally feel, finger, and handle; she must avoid concentrated exposure to dusts, fumes, odors, and pulmonary irritants; she is able to understand, remember, and carry out short and simple instructions; she can maintain attention for 2-hour segments, maintain regular attendance, and be punctual within customary tolerances; she can sustain an ordinary routine without special supervision; she can work in coordination with or in proximity to others without being unduly distracted by them; she can make simple work-related decisions and complete a normal workday and workweek without interruption from psychologically based symptoms; she can perform at a consistent pace without an unreasonable number and length of rest periods; she can ask simple questions, request assistance, accept instructions, and respond appropriately to criticism from supervisors; she can get along with

¹ Citations are the to the Certified Administrative Record (CAR) lodged on January 21, 2020, ECF No. 15.

1 co-workers or peers without unduly distracting them or exhibiting
2 behavioral extremes; she can respond appropriately to changes in a
3 routine work setting, be aware of normal hazards, and take
appropriate precautions;

- 4 4. Considering the claimant's age, education, work experience,
5 residual functional capacity, and vocational expert testimony, there
6 are jobs that exist in significant numbers in the national economy
7 that the claimant can perform.

8 See id. at 787-800.

9 This second action for judicial review followed.

10 III. DISCUSSION

11 In her opening brief, Plaintiff argues: (1) the ALJ erred at Step 2 in determining
12 Plaintiff's knee problems are non-severe; (2) the ALJ erred at Step 3 by failing to consider
13 Listings 1.02 and 12.15; (3) the ALJ committed a "compendium of errors" in evaluating the
14 medical opinions at Step 4; (4) the ALJ failed to properly evaluate lay witness evidence at Step 4;
15 and (5) the ALJ failed to provide sufficient reasons to discount the credibility of Plaintiff's
16 statements and testimony at Step 4.

17 A. Severity of Knee Impairment

18 To qualify for benefits, the plaintiff must have an impairment severe enough to
19 significantly limit the physical or mental ability to do basic work activities. See 20 C.F.R. §§
20 404.1520(c), 416.920(c).² In determining whether a claimant's alleged impairment is sufficiently
21 severe to limit the ability to work, the Commissioner must consider the combined effect of all
22 impairments on the ability to function, without regard to whether each impairment alone would be
23 sufficiently severe. See Smolen v. Chater, 80 F.3d 1273, 1289-90 (9th Cir. 1996); see also 42
24 U.S.C. § 423(d)(2)(B); 20 C.F.R. §§ 404.1523 and 416.923. An impairment, or combination of
25 impairments, can only be found to be non-severe if the evidence establishes a slight abnormality
26 that has no more than a minimal effect on an individual's ability to work. See Social Security

27 ² Basic work activities include: (1) walking, standing, sitting, lifting, pushing,
28 pulling, reaching, carrying, or handling; (2) seeing, hearing, and speaking; (3) understanding,
carrying out, and remembering simple instructions; (4) use of judgment; (5) responding
appropriately to supervision, co-workers, and usual work situations; and (6) dealing with changes
in a routine work setting. See 20 C.F.R. §§ 404.1521, 416.921.

1 Ruling (SSR) 85-28; see also Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir. 1988) (adopting
2 SSR 85-28). The plaintiff has the burden of establishing the severity of the impairment by
3 providing medical evidence consisting of signs, symptoms, and laboratory findings. See 20
4 C.F.R. §§ 404.1508, 416.908. The plaintiff's own statement of symptoms alone is insufficient.
5 See id.

6 At Step 2, the ALJ assessed the severity of Plaintiff's impairments. See CAR 787-
7 88. As to Plaintiff's knee impairment, the ALJ stated:

8 The claimant underwent bilateral knee patellofemoral realignment and
9 arthroscopy in 2006 with good results. The claimant continued working
10 until 2008. She required no further orthopedic care until October 2009,
11 more than 6 months after her date last insured (Ex. 1F). A reasonable
12 inference, therefore, is that the claimant's knee impairment did not prevent
13 the performance of work, since it did not prevent work after her surgeries
14 despite a similar medical condition. Since May 24, 2012, the claimant's
15 Title XVI protected filing date, the record reveals few complaints of knee
16 pain and little, if any, treatment. Moreover, radiographs of her knees were
17 within normal limits and examinations of the knees have been largely
18 benign (Ex. 3F/143, 4F/5, 19F/11).

19 CAR 787.

20 Plaintiff contends the ALJ's analysis is flawed because it applies the wrong
21 standard. See ECF No. 21, pgs. 21-22. The Court agrees. At Step 2, the inquiry is whether an
22 impairment has more than a minimal effect on the claimant's ability to work, not whether the
23 impairment prevents work. An impairment can only be found to be non-severe if it does not.
24 Here, the ALJ determined Plaintiff's knee impairment is not severe because, despite surgery in
25 2006, she continued to work until 2008. The question, however, is not whether Plaintiff's knee
26 impairment prevented her from working. Plaintiff's ability to work after her surgeries in 2006
27 does not mean that her knee impairment did not more than minimally impact her ability to engage
28 in such work. The ALJ's inference that "claimant's knee impairment did not prevent the
performance of work" is not the relevant standard at Step 2. Further, as the ALJ acknowledges,
Plaintiff's knee impairment required some treatment since May 24, 2012 – the date Plaintiff
applied for benefits. Finally, as Defendant admits, Drs. Pancho and Battis, upon whose opinions
the ALJ relied, found Plaintiff's knee impairment to be severe. See ECF No. 22, pgs. 12-13,
(Defendant's brief, citing CAR 85, 98, 115, and 129).

1 The Court finds the ALJ failed to apply the correct legal standard at Step 2 with
2 respect to Plaintiff’s knee impairment, and Defendant does not contend otherwise. Rather,
3 Defendant argues: (1) “For a claimant who has prevailed at step two, there can be no reversible
4 error at step two,” and (2) the ALJ’s analysis is sound because various doctors have concluded
5 that Plaintiff can perform a range of light work less restrictive than found by the ALJ. See ECF
6 No. 22, pgs. 12-13. These related arguments touch on the same principle – prejudice. In essence,
7 Defendants assert Plaintiff was not prejudiced by the error at Step 2 because other impairments
8 were found severe allowing her case to proceed and at Step 4 the ALJ found Plaintiff retains the
9 residual functional capacity for a range of light work based on all the evidence of record,
10 including evidence of Plaintiff’s knee impairment, which the ALJ specifically addressed.

11 Where the ALJ errs in not providing any reasons supporting a particular
12 determination (i.e., by failing to consider lay witness testimony), the Stout standard applies and
13 the error is harmless if no reasonable ALJ could have reached a different conclusion had the error
14 not occurred. See Stout v. Commissioner of Social Security, 454 F.3d 1050, 1056 (9th Cir.
15 2006). Otherwise, where the ALJ provides analysis but some part of that analysis is flawed (i.e.,
16 some but not all of the reasons given for rejecting a claimant’s credibility are either legally
17 insufficient or unsupported by the record), the Batson standard applies and any error is harmless
18 if it is inconsequential to the ultimate decision because the ALJ’s disability determination
19 nonetheless remains valid. See Batson v. Commissioner of Social Security, 359 F.3d 1190, 1197
20 (9th Cir. 2004).

21 The Court agrees that the ALJ’s application of the incorrect standard at Step 2
22 regarding Plaintiff’s knee impairment is harmless. Here, the ALJ provided an analysis of the
23 severity of Plaintiff’s impairments at Step 2, but part of that analysis was flawed. Specifically,
24 the ALJ applied the incorrect legal standard to assess Plaintiff’s knee impairment. The Court,
25 therefore, applies the Batson standard.³ Under Batson, the ALJ’s error is harmless if it is
26 inconsequential to the ALJ’s ultimate disability conclusion.

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28 ³ Stout would apply if the ALJ had ignored Plaintiff’s knee impairment (i.e.,
provided no analysis at all).

1 Such is the case here. In this regard, the Court finds Defendant’s argument
2 persuasive. According to Defendant:

3 . . .Dr. Battis and Dr. Pancho concluded that Plaintiff could
4 perform a range of light work that was less restrictive than what the ALJ
5 found (AR 85, 98 (Dr. Pancho agreed that light RFC was appropriate after
6 considering knee impairments), 113, 127 (Dr. Battis affirmed Dr.
7 Pancho’s opinion)). In other words, the doctors who agreed with Plaintiff
8 that she had severe knee impairments nevertheless concluded that she
9 could stand and walk six hours per day, kneel occasionally, and otherwise
10 perform a range of work at least as great as what the ALJ found. . . .

11 Furthermore, the ALJ actually discussed Plaintiff’s knee
12 impairments in finding them non-severe, and explained that she required
13 little treatment after her alleged onset of disability in 2008, and,
14 importantly, that examinations and imaging of her knees were normal (AR
15 787, citing 3F143, 4F5, 19F11/ AR 604 (1/25/12: knee joints are stable, no
16 effusion, good range of motion; 2/13/12: x-rays of knees within normal
17 limits), 627 (same), 773 (Dr. Ali’s examination of knees)). . . .

18 ECF No. 22, pg. 13.

19 As discussed in more detail below, in addition to Drs. Pancho and Battis, Drs. Genest and Ali also
20 concluded Plaintiff is capable of engaging in the physical demands of light work.

21 As Defendant notes, the ALJ considered the objective evidence regarding
22 Plaintiff’s knee impairment, which showed that it was not such that would contribute to disability,
23 as well as the opinion evidence, to conclude that Plaintiff retains the residual functional capacity
24 to perform a range of light work. This determination would have remained the same even had the
25 ALJ applied the correct legal standard at Step 2 to evaluation of Plaintiff’s knee impairment and
26 concluded that impairment was also severe. Again, whether an impairment is severe is a gate-
27 keeping finding, and even a finding that an impairment is severe, does not necessarily equate to
28 the remaining sequential findings necessary to conclude a claimant is disabled. The Court finds
that the ALJ’s error at Step 2 is inconsequential to the ALJ’s ultimate decision.⁴

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⁴ Whether the ALJ’s ultimate determination of non-disability is otherwise sound is discussed further in this decision.

1 **B. Listing of Impairments**

2 The Social Security Regulations “Listing of Impairments” is comprised of
3 impairments to fifteen categories of body systems that are severe enough to preclude a person
4 from performing gainful activity. Young v. Sullivan, 911 F.2d 180, 183-84 (9th Cir. 1990); 20
5 C.F.R. § 404.1520(d). Conditions described in the listings are considered so severe that they
6 are irrebuttably presumed disabling. 20 C.F.R. § 404.1520(d). In meeting or equaling a listing,
7 all the requirements of that listing must be met. Key v. Heckler, 754 F.2d 1545, 1550 (9th Cir.
8 1985).

9 At Step 3, the ALJ considered whether Plaintiff’s severe impairments, singly or in
10 combination, meet or medically equal an impairment listed in the regulations. See CAR 788-89.
11 In particular, the ALJ considered Listings 1.04, 11.09, 12.04, and 12.06. See id. Plaintiff
12 contends the ALJ erred by not considering Listings 1.02 and 12.15. See ECF No. 21, pgs. 22-25.

13 The Court finds the ALJ’s failure to consider Listing 1.02, relating to dysfunction
14 of the joints due to any cause, is dispositive. According to Plaintiff:

15 The medical evaluators both at initial and reconsideration decision
16 identified Listing 1.02 as requiring consideration. AR 87, 116. The ALJ
17 gave “great weight” to both evaluations but ignored Listing 1.02 without
18 explanation. Even if the ALJ’s non-severity determination as to Ms.
19 Thomas’ knees was not error (and, it was error), such did not relieve the
20 ALJ from considering knee limitations in combination with other
21 impairments at Step three and Listing 1.02, specifically, as the State
22 agency medical reviewers identified its applicability. Because it cannot be
23 said that no reasonable ALJ on this record could not have reached a
24 different result, the failure to consider Listing 1.02 was not harmless and
25 remand is required. Stout v. Commissioner, Social Sec. Admin., 454 F.3d
26 1050, 1056 (9th Cir. 2006).

27 ECF No. 21, pg. 23.

28 As Plaintiff correctly observes, state agency reviewing doctor, L. Pancho, whose
opinion the ALJ gave great weight, indicated that consideration of Listing 1.02 was appropriate.
See CAR 87. Agency reviewing physician, Dr. Battis, upon whose opinion the ALJ also relied,
similarly concluded that consideration of Listing 1.02 was warranted. See id. at 116. The ALJ,
however, did not consider this listing, likely because the ALJ concluded at Step 2 that Plaintiff’s
knee impairment was not severe. Given that Court’s finding above that the ALJ erred at Step 2

1 regarding the severity of Plaintiff’s knee impairment, the ALJ also erred at Step 3 in failing to
2 consider Listing 1.02 in the context of Plaintiff’s knee impairment.

3 The Court agrees with Defendant regarding the ALJ’s failure to explicitly evaluate
4 Listing 12.15. As Defendant correctly notes, Listing 12.15 requires some of the same essential
5 elements as Listings 12.04 and 12.06, both of which were considered by the ALJ. Given the
6 ALJ’s finding that neither is met, Listing 12.15 is necessarily also not met.

7 While the Court finds no error in the ALJ’s failure to explicitly evaluate Listing
8 12.15, the Court nonetheless concludes that the ALJ erred by failing to consider Listing 1.02
9 insofar as that listing might be applicable given Plaintiff’s knee impairment.

10 **C. Credibility**

11 The Commissioner determines whether a disability applicant is credible, and the
12 court defers to the Commissioner’s discretion if the Commissioner used the proper process and
13 provided proper reasons. See Saelee v. Chater, 94 F.3d 520, 522 (9th Cir. 1996). An explicit
14 credibility finding must be supported by specific, cogent reasons. See Rashad v. Sullivan, 903
15 F.2d 1229, 1231 (9th Cir. 1990). General findings are insufficient. See Lester v. Chater, 81 F.3d
16 821, 834 (9th Cir. 1995). Rather, the Commissioner must identify what testimony is not credible
17 and what evidence undermines the testimony. See id. Moreover, unless there is affirmative
18 evidence in the record of malingering, the Commissioner’s reasons for rejecting testimony as not
19 credible must be “clear and convincing.” See id.; see also Carmickle v. Commissioner, 533 F.3d
20 1155, 1160 (9th Cir. 2008) (citing Lingenfelter v Astrue, 504 F.3d 1028, 1936 (9th Cir. 2007),
21 and Gregor v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)).

22 If there is objective medical evidence of an underlying impairment, the
23 Commissioner may not discredit a claimant’s testimony as to the severity of symptoms merely
24 because they are unsupported by objective medical evidence. See Bunnell v. Sullivan, 947 F.2d
25 341, 347-48 (9th Cir. 1991) (en banc). As the Ninth Circuit explained in Smolen v. Chater:

26 The claimant need not produce objective medical evidence of the
27 [symptom] itself, or the severity thereof. Nor must the claimant produce
28 objective medical evidence of the causal relationship between the
medically determinable impairment and the symptom. By requiring that
the medical impairment “could reasonably be expected to produce” pain or

1 another symptom, the Cotton test requires only that the causal relationship
2 be a reasonable inference, not a medically proven phenomenon.

3 80 F.3d 1273, 1282 (9th Cir. 1996) (referring to the test established in
4 Cotton v. Bowen, 799 F.2d 1403 (9th Cir. 1986)).

5 The Commissioner may, however, consider the nature of the symptoms alleged,
6 including aggravating factors, medication, treatment, and functional restrictions. See Bunnell,
7 947 F.2d at 345-47. In weighing credibility, the Commissioner may also consider: (1) the
8 claimant's reputation for truthfulness, prior inconsistent statements, or other inconsistent
9 testimony; (2) unexplained or inadequately explained failure to seek treatment or to follow a
10 prescribed course of treatment; (3) the claimant's daily activities; (4) work records; and (5)
11 physician and third-party testimony about the nature, severity, and effect of symptoms. See
12 Smolen, 80 F.3d at 1284 (citations omitted). It is also appropriate to consider whether the
13 claimant cooperated during physical examinations or provided conflicting statements concerning
14 drug and/or alcohol use. See Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002). If the
15 claimant testifies as to symptoms greater than would normally be produced by a given
16 impairment, the ALJ may disbelieve that testimony provided specific findings are made. See
17 Carmickle, 533 F.3d at 1161 (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)).

18 At Step 4, the ALJ assessed the weight to give Plaintiff's statements and
19 testimony. See CAR 789-98. The ALJ did so in a combined evaluation of the objective medical
20 evidence as well as the medical opinions and lay witness evidence. See id. The ALJ summarized
21 Plaintiff's statements and testimony as follows:

22 The claimant was born in 1980 and is now aged 38. She alleged disability
23 due to anxiety, PTSD, bipolar manic-depression, scoliosis, and two knee
24 surgeries. As a result of her impairments, she asserted as follows. She has
25 difficulty lifting, twisting, squatting, bending, standing, walking, sitting,
26 kneeling, climbing stairs, seeing, remembering, completing tasks,
27 concentrating, understanding, using her hands, and getting along with
28 others. She reported she had to take breaks while working at a pizza job
she had in the past. She has back pain and her hands do not work
properly. She reports dropping things out of her hands. Her fingers
fumble due to numbness and cramping. She wears braces on her hands at
night. She estimated she could stand for 7 minutes and walk 2 blocks.
She has difficulty sleeping. She is forgetful; her medications make her
"space-out." She has difficulty climbing or running around to play with
her children. She feels nervous when she is outside. She does not like to
talk on the telephone. She has difficulty getting along with family

1 members and does not like to be around people. She underwent bilateral
2 carpal tunnel surgeries in 2016, which were somewhat helpful, but she
3 said that she continues to have numbness and cramping causing her to
4 drop things from her hands.

5 The claimant testified at the December 2018 hearing that she underwent
6 bilateral carpal tunnel releases and received physical therapy two years
7 ago. She gained hand strength, but said that she remains symptomatic.
8 However, she admitted she did not return to her surgeon to address these
9 complaints. Her bipolar symptoms caused her to have an “attitude,”
10 which resulted in her being fired from this job, but not her job as a
11 caregiver. She cannot do caregiving anymore because of issues with her
12 hands, difficulty standing for long, and problems with social issues. She
13 stated surgery and physical therapy did not help her hands because she still
14 has no strength in her hands and still drops things. She is not receiving
15 any mental health treatment and does not take any medications other than
16 an inhaler. She uses ibuprofen, marijuana, and CBD cream for pain. She
17 uses marijuana for her anxiety. She does not go to the store by herself and
18 states she cannot work in public. She has not sought mental health
19 treatment since she got “clean” 5 or 6 years ago.

20 CAR 790.

21 The ALJ next considered lay witness statements offered by Plaintiff’s friend,
22 Susan Smith. See id. at 790-91. The ALJ then offered the following vague and generalized
23 boilerplate statement recited in almost every hearing decision:

24 After careful consideration of the evidence, the undersigned finds that the
25 claimant’s medically determinable impairments could reasonably be
26 expected to cause the alleged symptoms; however, the claimant’s
27 statements concerning the intensity, persistence, and limiting effects of
28 these symptoms are not entirely consistent with the medical evidence and
other evidence in the record for the reasons explained in this decision.

Id. at 791.

21 The ALJ then engages in an extensive and lengthy discussion of the objective medical evidence
22 and the various opinions rendered by medical professionals. See id. at 791-98. Finally, the ALJ
23 concludes:

24 In sum, [Plaintiff’s] allegations are partially supported by her diligence in
25 seeking treatment for her conditions. While there were a couple of
26 occasions of increased abnormal clinical findings, the record does not
27 reveal any significant signs or marked limitations that persisted throughout
28 the relevant period. The weight of the evidence shows that while she
experiences some pain, numbness, irritability, and difficulty focusing, they
are controlled such that she could nonetheless perform a range of simple,
light exertional work as set forth herein.

1 In reaching this conclusion, the undersigned finds that the claimant has
2 severe impairments that cause some limitations of her ability to perform
3 work activities. Indeed, the assessment of the claimant's residual
4 functional capacity allows for many of her subjective complaints and
5 limitations. As discussed above, however, the extent to which the
6 claimant alleges an inability to perform any significant work activities on
7 a sustained basis are not fully supported when considered in light of the
8 entirety of the evidence of record. The sporadic treatment along with the
9 routine treatment modalities consisting primarily of occasional medication
10 use and two successful carpal tunnel releases persuades the undersigned
11 that the claimant's allegations of daily severe symptoms and significant
12 limitations are inconsistent with the medical evidence of record overall.

13 CAR 798.

14 Plaintiff argues: "The rationales offered. . . do not pass muster. . . ." ECF No. 21,
15 pg. 47. According to Plaintiff:

16 The ALJ's discussion of why she disbelieved Ms. Thomas' pain
17 and limitations testimony is literally littered with citations to entire
18 sections of the medical record. See, e.g., AR 791, citing, inter alia, "2F"
19 (99 pages), "9F" (23 pages) "13F" (10 pages) "16F" (28 pages) and "8F"
20 (11 pages). The ALJ's undifferentiated bulk citation to 99 pages of the
21 Administrative Record as supposed support for a contention does not
22 satisfy her obligation to set out "a detailed and thorough summary of the
23 facts and conflicting clinical evidence, stat[e] [her] interpretation thereof,
24 and make[] findings." *Cotton v. Bowen, supra*, 799 F.2d at 1408; *See, e.g.,*
25 *Romo v. Colvin*, 83 F.Supp.3d 1116, 1121 n.4 (D. Colo. 2015) (faulting an
26 ALJ's "global references to multi-page exhibits, without pinpoint citations
27 to specific pages"; "This court is neither required nor inclined to scour the
28 record in an attempt to divine the specific basis for an ALJ's opinion.").
The ALJ's failure to identify supposedly contradictory evidence with
sufficient particularity for this Court to conduct a meaningful review
precludes a finding that the ALJ's discrediting of Ms. Thomas' pain and
limitations testimony was supported by substantial evidence.

Another overarching problem is the ALJ's pervasive failure to
identify what specific pain and limitations testimony she believed and
what specific pain and limitations testimony she did not believe. The
ALJ's failure, from start to finish, to "specifically identify the testimony
she or he finds not to be credible" is a separate and independent error that
precludes a finding that her decision was based on substantial evidence.
Holohan v. Massanari, supra, 246 F.3d at 1208; *Reddick v. Chater, supra*,
157 F.3d at 724.

ECF No. 21, pgs. 47-48.

Plaintiff's argument is persuasive. The manner in which the ALJ evaluated
Plaintiff's statements and testimony is inadequate. First, the ALJ has made only general findings,
which are insufficient. See Lester, 81 F.3d at 834. In particular, the ALJ has failed to identify
what testimony is not credible and what evidence undermines the testimony. See id. Here, the

1 ALJ summarized Plaintiff's statements and testimony. The ALJ then engaged in a lengthy
2 discussion of the objective evidence and medical opinion evidence, providing assessments as to
3 the weight given the various opinions. Finally, the ALJ concluded that Plaintiff's statements and
4 testimony are "partially supported." The ALJ does not state which portions of Plaintiff's
5 statements and testimony are supported and which are not. Nor has the ALJ identified which
6 portions of the objective evidence or opinion evidence supports or undermines specific testimony
7 found not credible. As in Romo, cited by Plaintiff, this Court is not inclined to comb through the
8 extensive medical record in this case to attempt to discern which portions of the record generally
9 cited by the ALJ support or do not support Plaintiff's allegations. This is a task which falls to the
10 ALJ in the first instance.

11 Defendant's arguments in support of the ALJ's analysis are unpersuasive.
12 Defendant makes a good effort to sort out the objective evidence and opinions cited by the ALJ in
13 terms of the various allegations made by Plaintiff. See ECF No. 22, pgs. 24-26. In doing so,
14 Defendant does on appeal what the ALJ should have done at the agency level – identify the
15 testimony found not credible and the specific evidence supporting that conclusion. The Court can
16 only guess, however, whether the ALJ's assessment followed Defendant's analysis. Because this
17 Court is tasked with reviewing the agency's final decision, Defendant's attempt to cure the ALJ's
18 error on appeal is not availing.

19 In this regard, the Court considers whether the ALJ's flawed evaluation of
20 Plaintiff's credibility is harmless. Because the ALJ provided some analysis, albeit flawed, the
21 error is only harmless if it is inconsequential to the ALJ's ultimate determination of non-
22 disability. See Batson, 359 F.3d at 1197. In Batson, the court applied harmless error analysis to
23 the ALJ's failure to properly credit the claimant's testimony. See id. Specifically, the court
24 concluded:

25 However, in light of all the other reasons given by the ALJ for Batson's
26 lack of credibility and his residual functional capacity, and in light of the
27 objective medical evidence on which the ALJ relied, there was substantial
28 evidence supporting the ALJ's decision. Any error the ALJ may have
committed in assuming that Batson was sitting while watching television,
to the extent that this bore on an assessment of ability to work, was in our

1 view harmless and does not negate the validity of the ALJ's ultimate
2 conclusion that Batson's testimony was not credible.

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

4 Here, unlike Batson, the Court does not know with any certainty any of the reasons
5 relied upon by the ALJ due to the manner in which the ALJ evaluated Plaintiff's credibility.
6 Thus, the Court cannot say with certainty that the ALJ's error is inconsequential to the ultimate
7 disability determination. The record in Batson reflected other valid reasons the ALJ cited to
8 discount the claimant's credibility. The Court in this case has no such record.

9 While the Court does not necessarily find that the ALJ's ultimate conclusions with
10 respect to the credibility of Plaintiff's statements and testimony are incorrect, the Court finds that
11 the ALJ's process is deficient because it does not allow for meaningful review. A remand is
12 appropriate to allow the agency in the first instance to properly evaluate Plaintiff's statements and
13 testimony.

14 **D. Medical Opinions**

15 "The ALJ must consider all medical opinion evidence." Tommasetti v. Astrue,
16 533 F.3d 1035, 1041 (9th Cir. 2008) (citing 20 C.F.R. § 404.1527(b)). The ALJ errs by not
17 explicitly rejecting a medical opinion. See Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir.
18 2014). The ALJ also errs by failing to set forth sufficient reasons for crediting one medical
19 opinion over another. See id.

20 Under the regulations, only "licensed physicians and certain qualified specialists"
21 are considered acceptable medical sources. 20 C.F.R. § 404.1513(a); see also Molina v. Astrue,
22 674 F.3d 1104, 1111 (9th Cir. 2012). Where the acceptable medical source opinion is based on
23 an examination, the ". . . physician's opinion alone constitutes substantial evidence, because it
24 rests on his own independent examination of the claimant." Tonapetyan v. Halter, 242 F.3d 1144,
25 1149 (9th Cir. 2001). The opinions of non-examining professionals may also constitute
26 substantial evidence when the opinions are consistent with independent clinical findings or other
27 evidence in the record. See Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Social
28 workers are not considered an acceptable medical source. See Turner v. Comm'r of Soc. Sec.

1 Admin., 613 F.3d 1217, 1223-24 (9th Cir. 2010). Nurse practitioners and physician assistants
2 also are not acceptable medical sources. See Dale v. Colvin, 823 F.3d 941, 943 (9th Cir. 2016).
3 Opinions from “other sources” such as nurse practitioners, physician assistants, and social
4 workers may be discounted provided the ALJ provides reasons germane to each source for doing
5 so. See Popa v. Berryhill, 872 F.3d 901, 906 (9th Cir. 2017), but see Revels v. Berryhill, 874
6 F.3d 648, 655 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(f)(1) and describing circumstance
7 when opinions from “other sources” may be considered acceptable medical opinions).

8 The weight given to medical opinions depends in part on whether they are
9 proffered by treating, examining, or non-examining professionals. See Lester v. Chater, 81 F.3d
10 821, 830-31 (9th Cir. 1995). Ordinarily, more weight is given to the opinion of a treating
11 professional, who has a greater opportunity to know and observe the patient as an individual, than
12 the opinion of a non-treating professional. See id.; Smolen v. Chater, 80 F.3d 1273, 1285 (9th
13 Cir. 1996); Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987). The least weight is given to the
14 opinion of a non-examining professional. See Pitzer v. Sullivan, 908 F.2d 502, 506 & n.4 (9th
15 Cir. 1990).

16 In addition to considering its source, to evaluate whether the Commissioner
17 properly rejected a medical opinion the court considers whether: (1) contradictory opinions are in
18 the record; and (2) clinical findings support the opinions. The Commissioner may reject an
19 uncontradicted opinion of a treating or examining medical professional only for “clear and
20 convincing” reasons supported by substantial evidence in the record. See Lester, 81 F.3d at 831.
21 While a treating professional’s opinion generally is accorded superior weight, if it is contradicted
22 by an examining professional’s opinion which is supported by different independent clinical
23 findings, the Commissioner may resolve the conflict. See Andrews v. Shalala, 53 F.3d 1035,
24 1041 (9th Cir. 1995).

25 A contradicted opinion of a treating or examining professional may be rejected
26 only for “specific and legitimate” reasons supported by substantial evidence. See Lester, 81 F.3d
27 at 830. This test is met if the Commissioner sets out a detailed and thorough summary of the
28 facts and conflicting clinical evidence, states her interpretation of the evidence, and makes a

1 finding. See Magallanes v. Bowen, 881 F.2d 747, 751-55 (9th Cir. 1989). Absent specific and
2 legitimate reasons, the Commissioner must defer to the opinion of a treating or examining
3 professional. See Lester, 81 F.3d at 830-31. The opinion of a non-examining professional,
4 without other evidence, is insufficient to reject the opinion of a treating or examining
5 professional. See id. at 831. In any event, the Commissioner need not give weight to any
6 conclusory opinion supported by minimal clinical findings. See Meanel v. Apfel, 172 F.3d 1111,
7 1113 (9th Cir. 1999) (rejecting treating physician’s conclusory, minimally supported opinion); see
8 also Magallanes, 881 F.2d at 751.

9 The hearing decision reflects that the ALJ considered medical opinions from the
10 following sources at Step 4: (1) Shahid Ali, M.D.; (2) L. Pancho M.D.; (3) Sandra Mattis, M.D.;
11 (4) McDaniel, M.D.; (5) Genest, M.D.; (6) Herbert Monie, M.D.; (7) Douglas McMullin, M.D.;
12 (8) Adrienne Gallucci, Psy.D.; (9) Margaret Pollack, Ph.D.; and (10) John Champlin, M.D. See
13 CAR 792-97. The weight the ALJ assigned to these doctors’ opinions is summarized below:

14	Dr. Champlin	Little weight. <u>See id.</u> at 793.
15	Dr. Monie	Little weight. <u>See id.</u> at 793-94.
16	Dr. McMullin	Little weight. <u>See id.</u> at 794.
17	Dr. McDaniel	Some weight. <u>See id.</u> at 794-97.
18	Dr. Gallucci	Great weight. <u>See id.</u> at 792.
19	Dr. Pollack	Great weight. <u>See id.</u>
20	Dr. Ali	Great weight. <u>See id.</u> at 795, 797.
21	Dr. Pancho	Great weight. <u>See id.</u>
22	Dr. Battis	Great weight. <u>See id.</u>
23	Dr. Genest	Greatest weight. <u>See id.</u> at 797.

24 Plaintiff argues: (1) there is no basis to give Dr. Genest’s opinion the greatest
25 weight; (2) there is no basis to give any weight to the opinions offered by Dr. Ali; (3) the ALJ
26 erred in giving great weight to the opinions of the state agency physicians, Drs. Battis and
27 Pancho; (4) the ALJ “defies credulity” in giving great weight to the opinions of Drs. Gallucci and
28

1 Pollack regarding Plaintiff's mental impairments; and (5) the ALJ failed to provide adequate
2 reasons for rejecting the opinions of treating sources, Drs. Monie, Champlin, and McDaniel. See
3 CAR 21, pgs. 26-45. Plaintiff raises no arguments related to the ALJ's evaluation of Dr.
4 McMullin's opinions, which the ALJ gave little weight.

5 1. Testifying Medical Expert, Dr. Genest⁵

6 The ALJ accepted medical testimony at the second administrative hearing from
7 Dr. Genest. The ALJ described this testimony as follows:

8 Medical expert Dr. Genest testified at the December 2018 hearing that the
9 claimant has a history of bilateral carpal tunnel syndrome that was severe
10 on nerve conduction studies but "mild" clinically (Ex. 16F, 18F, 19F). He
11 found that the claimant's impairments did not meet or equal any listing,
12 including listing 11.09. Physically, she is primarily limited by carpal
13 tunnel syndrome. He stated he agreed with the conclusions of consultative
14 examiner Dr. Ali that the claimant could lift 10 pounds frequently and 20
15 pounds occasionally. She could sit, stand, and walk 8 hours a day. She
16 could occasionally push, and pull frequently, use her feet frequently, and
17 perform frequent postural and environmental activities. However, he
18 found no limitations in reaching but added that she could handle, finger,
19 and feel occasionally due to her carpal tunnel symptoms, which she
20 reported in her testimony were ongoing. Dr. Genest specifically addressed
21 the opinions of Drs. Monie and McMullin, stating that there was no
22 objective evidence to support the limitations they provided for physical
23 limitations. Dr. Genest did not opine on mental imitations because they
24 are outside his specialty. It is further noted that the claimant's
25 representative agreed with Dr. Genest's testimony that there was no
26 objective evidence of physical disease to support the limitations of Drs.
27 Monie and McMullin (Hearing Testimony 12/13/18).

28 CAR 797.

As to Dr. Genest's testimony, the ALJ concluded:

. . . [T]he undersigned gives greater weight to the additional limitations
imposed by Dr. Genest. Dr. Genest is a board-certified neurosurgeon who
had the opportunity to review the available evidence and the claimant's
testimony about her symptoms. In light of the updated evidence of record
and the subjective complaints as expressed by the claimant, the
undersigned finds that the record support a limitation to light exertional
work with occasional to frequent postural activities, occasional handling,

⁵ The hearing decision and the parties' briefs all refer to "Dr. Genest" who testified as a medical expert at the December 2018 second hearing. The transcript of the hearing provided with the CAR, however, indicates that medical expert testimony was offered by Dr. Janae. See CAR 811, 814. The testifying medical expert's curriculum vitae is contained in the record at Exhibit 21F. See CAR 1044-55. The curriculum vitae attached is for Dr. Stephen Genest, M.D., F.I.C.S. See id. at 1044. The record contains no curriculum vitae for Dr. Janae. The Court presumes the discrepancy is due to a transcription error.

1 fingering, and feeling, and no concentrated exposure to pulmonary
2 irritants. . . .

3 Id.

4 Plaintiff contends the ALJ erred in giving the greatest weight to Dr. Genest’s
5 opinions. See ECF No. 21, pgs. 26-29. First, Plaintiff argues there is no evidence to support the
6 ALJ’s statement that Dr. Genest is “a board-certified neurosurgeon.” See id. at 26-27. Second,
7 Plaintiff contends the ALJ erred in relying on Dr. Genest’s “opportunity to review the available
8 evidence” because “he did not avail himself much of that opportunity.” Id. at 27. Third, Plaintiff
9 states Dr. Genest “could not opine on any mental health-related issues.” Id. Fourth, Plaintiff
10 argues the ALJ erred in relying on Dr. Genest’s opinions because he failed to provide a detailed
11 explanation for his opinions, as required of a non-examining source. See id. at 27-28. Finally,
12 Plaintiff contends there are “other, intangible factors” undermining Dr. Genest’s opinions. Id. at
13 28.

14 According to Plaintiff: “ALJ French brought in Dr. Genest, a ‘hired gun’ of
15 dubious credibility and, charitably, marginal professional qualifications, deficits Ms. Thomas
16 could not discover because of the lack of advance notice. . . ,” and “[t]he grant of ‘great weight’
17 to Dr. Genest’s opinion is eloquent evidence of the lengths to which the ALJ went [to] sidestep
18 this Court’s mandate to provide a full and fair evaluation of whether Ms. Thomas meets or equals
19 the Criteria of Listing 11.14.” Id.

20 At the outset, the Court takes issue with Plaintiff’s counsel’s characterization of
21 the ALJ. Aspersions thrown at the ALJ do not advance Plaintiff’s arguments and are wholly
22 inappropriate. While counsel is obligated to zealously advocate on behalf of his client, the Court
23 expects counsel to do so in a respectful manner. Counsel is cautioned that briefs filed with this
24 Court after the date of this decision which demonstrate a lack of respect for the ALJ may subject
25 counsel to the imposition of sanctions.

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1 Next, the Court notes that, while Plaintiff accuses the ALJ of taking great lengths
2 to “sidestep” evaluation of Listing 11.14, the current hearing decision reflects that the ALJ did in
3 fact address this listing. See CAR 788. Specifically, the ALJ stated:

4 The district court decision. . . stated that the prior [administrative] decision
5 failed to consider listing 11.14, peripheral neuropathies, based on the
6 claimant’s allegations of numbness in her hands. However, the prior
7 decision stated that the claimant’s hand symptoms did not meet the criteria
8 of *any* of the neurological listings, which by definition includes all of the
9 listings in section 11.00 (entitled “*Neurological*”), including 11.14 (Ex.
10 9A/8). . . .

11 Id. (emphasis in original).

12 The Court also notes that, notwithstanding Plaintiff’s unfounded objection concerning the ALJ’s
13 handling of Listing 11.14, Plaintiff makes no argument related to Listing 11.14 in the current
14 appeal.

15 The Court next turns to Plaintiff’s specific arguments related to the ALJ’s
16 evaluation of Dr. Genest’s opinions.

17 i. Board Certification

18 According to Plaintiff:

19 The first reason offered by the ALJ for giving the greatest weight
20 to Dr. Genest’s opinions was the claim he is a board-certified
21 neurosurgeon. There is simply no basis for that assertion. While his 12-
22 page CV states he was board-certified as a neurosurgeon in 1967 (AR
23 1044), there is nothing to indicate that he is current with the ongoing
24 annual re-certification requirements of the American Board of
25 Neurological Surgery (“ABNS”), (footnote omitted) and Dr. Genest is not
26 found in the ABNS on-line directory of board-certified neurosurgeons.
27 The only even remotely recent certification referenced in Dr. Genest’s 12-
28 page CV is from 1994, when he became certified as a “medical
29 examiner.”¹⁸ AR 1050. The details page of his licensure information with
30 the California Medical Board identifies no current certifications
31 whatsoever.¹⁹ Bluntly, the ALJ (whether by ignorance or design or
32 because deceived) inflated Dr. Genest’s qualifications to lend credibility to
33 his opinions.

34 ECF No. 21, pgs. 26-27.

35 Plaintiff’s argument is unpersuasive. Dr. Genest’s curriculum vitae indicates that
36 the doctor is board-certified in neurology. See CAR 1045. While Plaintiff suggests that Dr.
37 Genest’s board certification was not current at the time of the hearing in December 2018, Plaintiff
38 has not proved the assertion. Plaintiff references an internet search that revealed no current board

1 certification in neurology for Dr. Genest. See ECF No. 21, pg. 26. Defendant, however,
2 references a different internet search that shows Dr. Genest was board certified in neurology as of
3 2020. See ECF No. 22, pg. 18. The Court is not willing to engage in a collateral discussion of
4 whether one internet search or the other is more reliable to prove the point. Suffice it to say,
5 Plaintiff’s citation to an internet search fails to carry her burden of establishing that Dr. Genest
6 was not board-certified in neurology at the time of the December 2018 hearing. Plaintiff has
7 pointed to no other indication that Dr. Genest’s representation in his curriculum vitae is false.

8 ii. Review of Records

9 Plaintiff contends:

10 The second reason offered by the ALJ for giving the greatest
11 weight to Dr. Genest’s opinions was that he “had the opportunity to
12 review the available evidence and the claimant’s testimony about her
13 symptoms.” AR 797. He may have “had the opportunity,” but he did not
14 avail himself much of that opportunity. The ALJ stated that Dr. Genest
15 was called as a witness specifically and solely “to address the issues on
16 remand relating to Listing 11.14.” AR 1040. Listing 11.14 relates to
17 peripheral neuropathy, in this case Ms. Thomas’ carpal tunnel issues.
18 However, his first question to Ms. Thomas was why she had not yet had
19 carpal tunnel surgery (AR 812-13); he was completely unaware that she
20 had had carpal tunnel surgery on both wrists three years earlier. Also, the
21 ALJ’s assertion that Dr. Genest had the opportunity to review Ms.
22 Thomas’ testimony is factually dubious; the ALJ stated during hearing that
23 Dr. Genest had only been given medical records and had not received
24 Administrative Record documents such as this Court’s prior order. AR
25 820. There is nothing on the face of the record even hinting that Dr.
26 Genest had the opportunity to review the 27 pages of prior testimony by
27 Ms. Thomas and he was dropped from the conference call before Ms.
28 Thomas testified at the second hearing.

ECF No. 21, pg. 27.

Plaintiff’s argument is both unpersuasive and puzzling given that, as indicated
above, Plaintiff offers no arguments in the current appeal challenging the ALJ’s discussion
concerning Listing 11.14. In any event, the Court agrees with Defendant, who argues: “. . . Even
so, Plaintiff told Dr. Genest at the hearing that she had carpal tunnel surgery (AR 813), and Dr.
Genest accepted that testimony and opined that Plaintiff could only occasionally use her hands,
i.e., she could use her hands only two hours out of an eight-hour day, an extremely restrictive
limitation (AR 816).” ECF No. 22, pg. 18. In this regard, Plaintiff suggests Dr. Genest could not
have known about Plaintiff’s testimony because the doctor “was dropped from the conference call

1 before Ms. Thomas testified. . . .” ECF No. 21, pg. 27. The hearing transcript, however, shows
2 that Plaintiff testified about her carpal tunnel surgery before the medical expert testified. See
3 CAR 807-44 (transcript of December 2018 administrative hearing). The Court concludes that, to
4 the extent Dr. Genest was unaware of records relating to Plaintiff’s carpal tunnel surgery, the
5 doctor was nonetheless made aware of Plaintiff’s surgeries at the hearing and accepted Plaintiff’s
6 claimed limitations related thereto.

7 iii. Mental Health Issues

8 Plaintiff asserts:

9 In addition, even though Listing 11.14B has both a medical
10 component and a mental health component, Dr. Genest specifically stated
11 that he could not opine on any mental health-related issues. AR 822. It
12 was impossible for him, by his own admission, to opine with any authority
13 as to even the narrow issue on which he was retained to opine.

14 ECF No. 21, pg. 27.

15 Again, the Court finds Plaintiff’s argument puzzling given that she does not raise
16 any claim of error in the current appeal regarding the ALJ’s discussion of Listing 11.14.
17 Moreover, the hearing decision reflects that the ALJ did not rely on Dr. Genest’s testimony in
18 addressing Listing 11.14. See CAR 788.

19 iv. Detailed Explanation

20 Plaintiff contends:

21 Further, as a non-treating/non-examining physician Dr. Genest had
22 to provide a detailed explanation for his opinions (§ 404.1527(c)(4)); all
23 Dr. Genest offered was the bald opinion that Ms. Thomas does not meet
24 the Criteria of Listing 11.14, an opinion proffered even while he
25 disclaimed any competence as to one of the two components of that
26 Listing. Dr. Genest never mentioned—much less discussed—the EMG test
27 results diagnosing “bilateral severe median neuropathy at the wrists.” AR
28 762. He never mentioned—much less discussed—the surgical notes or post-
operative evaluation notes regarding Ms. Thomas’ carpal tunnel surgery
two years earlier. AR 1179-1225. He never mentioned—much less
discussed—the scaphoid fracture of her right wrist. AR 1142. He never
mentioned -- much less discussed—that she wears splints on her wrists to
ameliorate the symptoms of carpal tunnel syndrome. AR 1177. The only
specific portion of the medical record Dr. Genest cited in his testimony
was Dr. Ali’s cursory consultative examination report which made no
effort, at least on its face, to evaluate Ms. Thomas’ carpal tunnel syndrome
and, like Dr. Genest’s testimony, entirely failed to discuss the EMG study
and its attendant finding of bilateral severe ulnar neuropathy. Also, Dr.
Genest did not even get Dr. Ali’s report right: Dr. Genest testified that Dr.

1 Ali had not opined as to manipulative limitations; Dr. Ali rendered
2 opinions as to manipulative limitations in his examination report (AR 774)
and his “medical source statement” (AR 767).

3 ECF No. 21, pgs. 27-28.

4 The only referenced legal support is 20 C.F.R. § 404.1527(c)(4). This regulation
5 governs the evaluation of opinion evidence in claims filed before March 27, 2017. See 20 C.F.R.
6 § 404.1527. Sub-section (c)(4) provides: “Generally, the more consistent a medical opinion is
7 with the record as a whole, the more weight we will give to that medical opinion.” 20 C.F.R.
8 § 404.1527(c)(4). The Court fails to see how this authority supports Plaintiff’s contention.
9 Moreover, Plaintiff challenges the doctor’s lack of detailed explanation regarding Listing 11.14, a
10 listing Plaintiff does not argue in this appeal.

11 v. Other Factors

12 Plaintiff argues:

13 Finally, there are the other, intangible, factors encompassed within
14 (c)(6). Ms. Thomas respectfully submits are relevant to Dr. Genest’s
15 general competence; according to his own CV, he has not had a
16 relationship with any hospital anywhere in the greater San Jose area since
17 1996. It is relevant to his competence that: (1) his privileges at one
18 hospital (Good Samaritan) were revoked by the hospital in 1995 “medical
disciplinary cause”; and (2) shortly after that his relationships with the
only two other hospitals where he still had consulting privileges ended. It
is also relevant to his credibility that Dr. Genest’s CV mentions that his
relationship with Good Samaritan ended but fails to disclose that it
because Good Samaritan revoked those privileges.

19 ECF No. 21, pg. 28.

20 This apparent afterthought argument is completely meritless. Plaintiff has
21 provided no evidence to support her assertions. Nor has she cited to any authority to show that
22 Dr. Genest’s privileges or lack thereof are in any way relevant. The Court reminds Plaintiff’s
23 counsel of his obligation to present arguments only with a good faith belief that they are
24 supported by law and fact. Counsel’s failure to cite to either in support of this particular
25 argument suggests a lack of good faith, which is also potentially sanctionable conduct.

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1 is unexplained. See id. at 31. Finally, Plaintiff contends the ALJ failed to consider the
2 “thoroughness” of Dr. Ali’s opinion. Id. at 31-32.

3 In footnote 20 of Plaintiff’s brief, Plaintiff adds:

4 Dr. Ali’s examination of Ms. Thomas was commissioned after the
5 first hearing before ALJ French. His report was not provided to Ms.
6 Thomas or her lay representative before (or even after) the ALJ issued her
7 first opinion. The ALJ seemingly tried to conceal these facts by
8 identifying Dr. Ali’s report in the list of exhibits appended to her decision
9 as received prior to the hearing (AR 33) and thus presumably provided to
10 claimant’s representative before the hearing.

11 ECF No. 21, pg. 29, n.20 (emphasis added).

12 In essence, Plaintiff accuses the ALJ of lying, presumably for the purpose of thwarting Plaintiff’s
13 claim. Plaintiff provides no support in law or fact for her contention that the ALJ acted so
14 improperly. Plaintiff’s counsel is again cautioned that presenting specious and disrespectful
15 arguments without any good faith basis in law or fact is sanctionable conduct.

16 The Court turns to Plaintiff’s specific arguments with respect to the ALJ’s
17 evaluation of Dr. Ali’s opinions.

18 i. Familiarity with the Record

19 Citing 20 C.F.R. § 404.1527(c)(6), Plaintiff argues the ALJ failed to consider Dr.
20 Ali’s lack of familiarity with the entire record. See ECF No 21, pgs. 29-30. According to
21 Plaintiff:

22 . . . Dr. Ali’s report states that before the examination he was
23 provided four treatment notes; the report provides the dates of the notes
24 but does not say what they relate to. AR 771. A review of the medical
25 record shows that the only documents bearing those dates are: (1) a June
26 23, 2010 treatment note relating to a hip and buttocks injury from a slip
27 and fall; (AR 751-53); (2) a February 20, 2013, note regarding social
28 anxiety disorder and mood disorder (AR 749-50); (3) a January 14, 2014
treatment note regarding a mouth infection (AR 746-48); and (4) the
August 27, 2014 EMG study by Dr. Parvinder. AR 761-62. The first and
third notes are irrelevant to any issue. The second note is germane to
mental health issues but irrelevant as to Dr. Ali; he has no identified
expertise in mental health, conducted no mental health examination and
rendered no opinions on mental health issues. The fourth treatment note,
the EMG study, is squarely relevant but either Dr. Ali did not read it or
[he] misunderstand it; his report diagnosis “possible carpal tunnel
syndrome” (AR 774) while the EMG study and resulting report (from a
board-certified neurologist) expressly and unequivocally diagnosed
“bilateral severe median neuropathy at the wrists” AR 762. In short, Dr.
Ali evidenced no understanding even of the two pages of relevant medical

1 records provided to him (out of 460 pages of medical records then extant);
2 manifestly, Dr. Ali’s opinions are entitled to no weight under (c)(6).

3 Id.

4 20 C.F.R. § 404.1527(c)(6) states in relevant part: “For example, the amount of
5 understanding of our disability programs and their evidentiary requirements that a medical source
6 has,. . . and the extent to which a medical source is familiar with other information in your case
7 record, are relevant factors that we will consider in deciding the weight to give a medical
8 opinion.” Id. Here, Plaintiff contends the ALJ failed to acknowledge that Dr. Ali “evidenced no
9 understanding” of portions of the record, specifically an August 27, 2014, EMG study. ECF No.
10 21, pg. 30.

11 The Court rejects this argument. First, Dr. Ali’s report, contained at Exhibit 19F,
12 CAR 771-74, specifically indicates that the doctor reviewed a record dated “08/27/2014.” Id. at
13 771. Second, contrary to Plaintiff’s suggestion that Dr. Ali diagnosed “possible carpal tunnel
14 syndrome,” Dr. Ali diagnosed “[I]ikely carpal tunnel syndrome,” indicating the doctor was aware
15 of the August 27, 2014, EMG study revealing wrist neuropathy and agreed that the study showed
16 carpal tunnel syndrome. Id. at 774. Third, an EMG study – which is simply a piece of the
17 objective evidence – does not in and of itself indicate a medical diagnosis such that it is
18 necessarily inconsistent with Dr. Ali’s opinion as to the meaning of the study. In other words, the
19 study is evidence to support the doctor’s conclusions, not a conclusion standing alone. No piece
20 of objective evidence has any stand-alone value in determining residual functional capacity
21 absent a medical opinion explaining how such evidence demonstrates some effect on a claimant’s
22 functional capacity.

23 ii. The Doctor’s Specialty

24 Plaintiff contends:

25 Subsection (c)(5) allows extra weight to be given to the opinion of
26 a specialist. The signature block in Dr. Ali’s report claims he is “board-
27 certified” but does not identify a specialization. A review of his licensure
28 information with the CMB discloses that he is not an internist; he is a
sleep medicine specialist. (footnote omitted). While Ms. Thomas’ history
of sleeplessness and fatigue were recognized by the State agency records
reviewers and the ALJ (AR 113, 26, 790, 798) Dr. Ali made no reference

1 to them and made no findings as to their impact on functionality.
2 Accordingly, his specialization is not relevant, and does not entitle Dr. Ali
3 to any enhanced credibility under (c)(5).

4 ECF No. 21, pg. 30.

5 Presumably citing 20 C.F.R. § 404.1527(c)(5), which provides that the agency
6 will consider, among other things, a doctor's specialization, Plaintiff argues the ALJ failed to
7 identify Dr. Ali's area of specialty, if any. According to Plaintiff, Dr. Ali's opinions are not
8 entitled to "enhanced credibility" based on specialization. While the Court agrees generally in
9 that § 404.1527(c)(5) states that the ALJ will "generally give more weight to the medical opinion
10 of a specialist," this is not to say that controlling weight cannot be afforded to opinions from
11 doctors who are not specialists. In any event, there is no indication in the ALJ's hearing decision
12 to indicate any additional weight was given to Dr. Ali's opinions due to a particular area of
13 specialty.

14 iii. Inconsistencies within Report

15 Plaintiff argues the ALJ failed to consider inconsistencies among Dr. Ali's reports
16 under 20 C.F.R. § 404.1519p(a)(2). See ECF No. 21, pg. 30. This argument is squarely belied by
17 the ALJ's discussion of Dr. Ali's reports in which the ALJ acknowledges some inconsistencies
18 and accepts the more limiting opinions over the less limiting opinions.

19 iv. Inconsistencies with the Record as a Whole

20 Next, Plaintiff contends:

21 Under § 404.1527(c)(4) consistency with the medical record as a
22 whole is also important. Dr. Ali's findings were markedly different from
23 those of the State agency medical records reviewers at Initial and
24 Reconsideration in several ways. For example, the State agency records
25 reviewers found no manipulative limitations (i.e. reaching, handling,
26 fingering, and feeling) while Dr. Ali's source statement limited reaching
27 handling and fingering to frequently and assessed never as to feeling. State
28 agency records reviewers found no environmental limitations, whereas Dr.
29 Ali said Ms. Thomas should never be exposed to humidity, wetness, dust,
30 odors, fumes, and/or pulmonary irritants. In addition, Dr. Ali's opinions
31 are contradicted in virtually every respect by the opinions of three treating
32 physicians. Dr. Ali's opinion is entitled to no enhanced weight, and
33 perhaps to no weight, under (c)(4).

34 ECF No. 21, pg. 31.

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1 Plaintiff's argument is unpersuasive because it presumes that the reports of the
2 three treating sources – Drs. Monie, Champlin, and McDaniel – are entitled to any controlling
3 weight. As discussed in more detail below, the ALJ correctly concluded they are not.
4 Specifically, the treating source opinions are, in general, conclusory and unsupported.

5 Plaintiff's argument apparently contends the ALJ erred in discounting Dr. Ali's
6 opinions of greater limitation than found by the doctors who only reviewed records. Plaintiff
7 contends Dr. Ali's opinions are inconsistent with the opinions of the consultative reviewing
8 doctors who found no manipulative or environmental limitations. While the opinions do in fact
9 differ, the ALJ is entitled to resolve the conflict and, in this case, did so in Plaintiff's favor.

10 v. Level of Explanation in Report

11 Plaintiff asserts:

12 Section 404.1527(c)(3) states that: "The better an explanation a
13 source provides for a medical opinion, the more weight we will give that
14 medical opinion." The opinions portion of Dr. Ali's report (AR 774)
15 consists of 77 words in toto, without one word of explanation for any of
16 the limitations or lack thereof that he is claiming. Dr. Ali's "medical
17 source statement" (765-70) has a section for explanations after each
18 subcategory of limitations assessments; there is not one word of
19 explanation offered anywhere in that report for any limitations finding. Dr.
20 Ali's findings are entitled to no weight under § 404.1527(c)(3).

21 ECF No. 21, pg. 31.

22 The 77 words Plaintiff's says Dr. Ali used in expressing his opinions as to
23 Plaintiff's functional capacity are far more than were used by the treating sources, whose opinions
24 consisted entirely of check-the-box forms with little, if any, explanation.⁶ In any event, the Court
25 disagrees with Plaintiff that Dr. Ali's findings are unexplained. To the contrary, the findings are
26 explained by the detailed summary of largely normal objective findings outlined in the doctor's
27 report. See CAR 772-74.

28 vi. Thoroughness of Report

According to Plaintiff:

⁶ While Dr. Ali completed a check-the-box form, his form was accompanied by a detailed written report outlining the doctor's objective findings, medical diagnoses, and opinions as to functional abilities.

1 Finally, there is the thoroughness of the Dr. Ali's examination, a
2 relevant factor under § 404.15 19p(a)(4). The ALJ gave "great weight" to
3 Dr. Ali's report because, according to the ALJ, it "was based on direct
4 examination, personal observation and objective tests." AR 797. Dr. Ali's
5 report is bejeweled with esoteric medical terms and tests, which obscures
6 their essential meaninglessness. As but a few examples: (1) Dr. Ali
7 evaluated Ms. Thomas' vision (which is in no manner implicated by any
8 of her disabling impairments) using what he calls "Snellen's test" (AR
9 772); there is no such thing as "Snellen's test" though there is a "Snellen
10 chart," the standard eye should chart found taped to the wall of every
11 doctor's office; and (2) "inguinal lymph nodes" (AR 772) are lymph
12 glands in the groin area, around the edge of the Mons Venus—they can
13 become swollen because of skin infections such as athlete's foot or
14 bladder infections; again none of these maladies are in any way related to
15 Ms. Thomas' alleged (and actual) impairments.

16 Simultaneously with conducting impressive sounding tests having
17 nothing to do with Ms. Thomas' claim and conducting irrelevant and
18 intrusive physical examinations, Dr. Ali was ignoring and/or omitting
19 crucial relevant testing for assessing Ms. Thomas' ulnar neuropathy. Three
20 distinct tests are utilized during a physical examination to determine
21 whether a patient has a ulnar neuropathy: Tinel's Sign (tapping or pressing
22 on the median nerve—tingling or an electric-shock-like sensation indicates
23 possible carpal tunnel syndrome); Phalen's Maneuver (flexion of the wrist
24 for 1 to 2 minutes—numb or tingling fingers is a determinant of carpal
25 tunnel); and Two-Point Discrimination Test (ability to distinguish between
26 distinct pressure points—identifies nerve functioning and nerve
27 compression deficits indicative of carpal tunnel). (Internet link omitted).
28 Despite expressly acknowledging the likelihood of carpal tunnel syndrome
(AR 774), Dr. Ali—arguably—conducted only one of those three tests,
Tinel's Sign. (footnote omitted). Dr. Ali specifically failed to conduct the
one test (Phelan's Maneuver) which is an absolute determiner of carpal
tunnel syndrome. Contrary to the ALJ's bald assertion, there is nothing
laudable, or even competent, about Dr. Ali's examination.

ECF No. 21, pgs. 31-32.

In essence, Plaintiff would have this Court accept her lay opinion as to which tests
are relevant and which are not over the doctor's opinion as to which tests would adequately reveal
Plaintiff's functional capacity. The Court is unwilling to do so. While Plaintiff states in her brief
that certain tests are "crucial," she is not a doctor and cannot so opine.

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2 3. Consultative Reviewing Professionals, Drs. Pancho, Battis, Gallucci
3 and Pollack

4 Drs. Pancho, Battis, Gallucci, and Pollack are all agency doctors who reviewed
5 medical records and rendered opinions. Drs. Pancho and Battis opined as to Plaintiff's physical
6 capabilities. Drs. Gallucci and Pollack opined as to Plaintiff's mental capabilities.

7 i. Drs. Pancho and Battis

8 As to Drs. Pancho and Battis, whose opinions regarding Plaintiff's physical
9 impairments the ALJ gave great weight, the ALJ stated:

10 . . . State agency medical consultants L. Pancho, M.D., and Sandra Battis,
11 M.D., opined that the claimant could perform light exertional work with
12 occasional climbing of ladders, stooping, kneeling, crouching, and
13 crawling (Ex. 1A, 2A, 5A, 6A).

14 * * *

15 . . . The State agency consultants [Drs. Pancho and Battis] are familiar
16 with the Social Security rules. Their assessments were based on their
17 review of the medical records since the claimant's alleged onset date and
18 their findings are consistent with and supported by the discussed overall
19 medical records in the file. . . .

20 CAR 795, 797.

21 Plaintiff contends "[t]he deficits in this assessment are many." Specifically,
22 Plaintiff argues: (1) the doctors' opinions are unexplained; (2) there is no indication the doctors
23 are specialists; (3) the ALJ fails to identify conflicting clinical evidence; (4) the ALJ does not
24 explain why she believed Plaintiff's carpal tunnel surgery in 2015 exacerbated rather than
25 relieved symptoms; and (5) the ALJ fails to identify the records she found consistent with the
26 doctors' opinions. See ECF No. 21, pg. 33-34. As to Dr. Battis in particular, Plaintiff states:
27 "The other medical records reviewer, Sandra Battis, M.D. shows no specialization on her MBC
28 webpage (footnote omitted) though it may be fair to characterize her as a specialist in giving the
Commissioner the opinions he wants. . . ." Id. at 33.

Plaintiff's last argument as to Dr. Battis is unpersuasive and, quite frankly,
insulting. Plaintiff suggests that Dr. Battis is paid to render the opinion the Commissioner wants

1 in any given case. Plaintiff, however, provides absolutely no factual support for this claim of
2 nefarious motive, nor can she given that the Commissioner's mission is the fair administration of
3 the social security program. The Court categorically rejects Plaintiff's suggestion that the
4 Commissioner's decisions are result-driven and that Dr. Battis is a shill hired to support pre-
5 determined unfavorable decisions. Moreover, the purpose for which a medical report was
6 obtained, without other evidence to undermine the report, is not a basis to challenge the opinions
7 in the report. See Reddick, 157 F.3d at 726.

8 The Court also rejects Plaintiff's argument that the ALJ failed to consider whether
9 the doctors are specialists. As discussed above, the regulations permit the ALJ to give greater
10 weight to the opinions of doctors who are specialists in relevant fields of medicine. See 20 C.F.R.
11 § 404.1527(c)(5). There is no indication in this case that the ALJ gave any additional weight to
12 the opinions of either Dr. Pancho or Battis based on a specialty.

13 Next, the Court finds Plaintiff's argument regarding her 2015 carpal tunnel surgery
14 unpersuasive. According to Plaintiff, the ALJ failed to explain why she believed the 2015
15 surgery exacerbated rather than alleviated symptoms. The Court, however, finds no indication in
16 the hearing decision that the ALJ so believed, and Plaintiff cites to no language in the decision
17 indicating such a belief. In any event, whether Plaintiff's 2015 surgery made her carpal tunnel
18 condition worse or better is irrelevant to determining residual functional capacity because the
19 question at Step 4 is what the Plaintiff can still do despite her impairments. What is important is
20 what Plaintiff can do following the surgery regardless of whether the surgery helped or made
21 things worse.

22 Plaintiff also contends the ALJ erred in relying on the opinions rendered by Drs.
23 Pancho and Battis because they are unexplained. Plaintiff's argument is belied by the record.
24 The doctors' opinions are contained in Exhibits 1A, 2A, 5A, and 6A. See CAR 81-93 (Exhibit
25 1A), 94-106 (Exhibit 2A), 109-22 (Exhibit 5A), and 123-36 (Exhibit 6A). Exhibits 1A and 2A
26 contain Dr. Pancho's opinion of September 14, 2012. See id. at 85, 87-88 (Exhibit 1A), and 98,
27 100-01 (Exhibit 2A). Exhibits 5A and 6A contain Dr. Battis's opinion of April 27, 2013. See id.
28 at 117-18 (Exhibit 5A), and 131-32 (Exhibit 6A). These records clearly show a detailed analysis

1 of the evidence culminating in the doctors' opinions as to Plaintiff's physical and mental capacity.
2 See id. at 84-85 ("Findings of Fact and Analysis of Evidence," Exhibit 1A), 97-98 ("Findings of
3 Fact and Analysis of Evidence," Exhibit 2A), 113-14 ("Findings of Fact and Analysis of
4 Evidence," Exhibit 5A), and 127-28 ("Findings of Fact and Analysis of Evidence," Exhibit 6A).

5 Next, Plaintiff claims the ALJ erred by stating that the doctors' opinions are
6 consistent with other evidence of record but failing to specifically identify such evidence. This
7 argument, which is not supported by any citation to authority, is unpersuasive. Further, a review
8 of the hearing decision reflects that the ALJ referenced extensive evidence of record supporting
9 the doctors' conclusions that Plaintiff can perform a range of light work. Such evidence includes
10 the opinions of Drs. Genest and Ali, discussed above, as well as the numerous instances of normal
11 objective findings on examinations.

12 Finally, Plaintiff faults the ALJ for not identifying conflicting clinical evidence
13 when evaluating the opinions rendered by Drs. Pancho and Battis. This argument is also
14 unpersuasive. Plaintiff cites the rule that the ALJ must set out a detailed summary of the facts
15 and conflicting clinical evidence when rejecting a medical opinion. According to Plaintiff:
16 "Where, as here, an ALJ disagrees with the opinion of a medical source, the substantial evidence
17 rule requires that the ALJ '[set] out a detailed and thorough summary of the facts and conflicting
18 clinical evidence, stating his interpretation thereof, and making findings.' *Magallanes supra*, 881
19 F.2d at 751 quoting *Cotton v. Bowen, supra*, 799 F.2d at 1408." ECF No. 21, pgs. 33-34
20 (emphasis added). Here, however, the ALJ accepted the opinions of Drs. Pancho and Battis.

21 ii. Drs. Gallucci and Pollack

22 The ALJ summarized the opinions of Drs. Gallucci and Pollack, who reviewed
23 medical records related to mental impairments, as follows:

24 State agency psychological consultants Adrienne Gallucci, Psy.D., and
25 Margaret Pollack, Ph.D., opined that the claimant could remember work-
26 like procedures and understand and remember short and simple
27 instructions. She could carry out short and simple instructions, maintain
28 attention for 2-hour segments, maintain regular attendance and be punctual
within customary tolerances, sustain an ordinary routine without special
supervision, work in coordination with or proximity to others without
being unduly distracted by them, make simple work-related decisions and
complete a normal workday and workweek without interruption from

1 psychologically based symptoms, perform at a consistent pace without an
2 unreasonable number and length of rest periods, ask simple questions or
3 request assistance, accept instructions and respond appropriately to
4 criticism from supervisors, get along with coworkers or peers without
unduly distracting them or exhibiting behavioral extremes, respond
appropriately to changes in a routine work setting, and be aware of normal
hazards and take appropriate precautions (Ex. 1A, 2A, 5A, 6A).

5 CAR 792.

6 As to these opinions, the ALJ concluded:

7 . . . These opinions are given great weight because they are consistent with
8 the discussed treatment records showing the claimant's mental conditions
9 were relatively controlled with mediations prior to May 2014 and without
medication since that time.

10 Id.

11 Plaintiff argues the ALJ erred in failing to afford these opinions great weight
12 because they "differ in some significant respects. . . ." ECF No. 21, pgs. 34-35. According to
13 Plaintiff: "[I]t defies reason that the ALJ could, with a straight face, accord equal weight to two
14 such starkly contradictory opinions." Id. at 35. Additionally, Plaintiff argues that the doctors'
15 reports are not only inconsistent with each other but are also both internally inconsistent. See id.

16 As with Drs. Pancho and Battis, the opinions of Drs. Gallucci and Pollack are
17 contained in Exhibits 1A, 2A, 5A, and 6A. See CAR 81-93 (Exhibit 1A), 94-106 (Exhibit 2A),
18 109-22 (Exhibit 5A), and 123-36 (Exhibit 6A). Exhibits 1A and 2A contain Dr. Gallucci's
19 opinion of September 25, 2012. See id. at 88-91 (Exhibit 1A), and 101-04 (Exhibit 2A). Exhibits
20 5A and 6A contain Dr. Pollack's opinion of May 8, 2013. See id. at 115-16, 118-20 (Exhibit 5A),
21 and 128-29, 132-34 (Exhibit 6A). A review of these opinions reflects that Plaintiff is correct
22 insofar as Drs. Gallucci and Pollack did not necessarily agree on the level of limitation in
23 particular areas of mental functioning. Specifically, in some areas, one doctor found Plaintiff's
24 limitations moderate while the other doctor found only a slight limitation.

25 Defendant's argument is persuasive on this point. According to Defendant:

26 . . . [E]ven if they differed as to whether Plaintiff's limitations
27 were moderate or not, their conclusions about what Plaintiff could do
28 despite her limitations were *identical* (AR 89-90, 102-03, 119-20, 133-34).
Relatedly, Plaintiff complains that Dr. Gallucci and Dr. Pollack found
moderate limitations in some areas but then explained that they could

1 perform those tasks (ECF No. 21 at 34), but a moderate limitation does not
2 mean one is precluded from that work, as these experts indicated. *Cf.* 20
3 C.F.R. § 404.1520a(c)(4) (defining only an “extreme” limitation in certain
4 mental domains as “a degree of limitation that is incompatible with the
5 ability to do any gainful activity”); *Stubbs-Danielson v. Astrue*, 539 F.3d
6 1169, 1174 (9th Cir. 2008) (affirming the ALJ’s reliance on a translation
7 of moderate limitations into concrete restrictions).

8 ECF No. 22, pg. 20.

9 Because the ALJ may translate moderate limitations into appropriate work restrictions, and
10 because Drs. Gallucci and Pollack rendered the same ultimate opinions as to Plaintiff’s mental
11 functional capacity notwithstanding the lack of complete agreement, the Court finds no error.

12 4. Treating Sources, Drs. Monie, Champlin, and McDaniel

13 According to Plaintiff: “The ALJ’s discrediting of the opinions in six medical
14 source statements from three treating physicians [Drs. Monie, Champlin, and McDaniel] is
15 factually and legally invalid and must be reversed.” ECF No. 21, pg. 36. As to what Plaintiff
16 labels “housekeeping” matters, Plaintiff argues: (1) as provided in the CAR, two of the source
17 statements are missing pages and “most are not found in consecutive page order. . .”; (2) the ALJ
18 “made no finding that any of the mental health-related opinions by the treating physicians were
19 contradicted. . .”; (3) these physicians’ opinions are not conclusory in comparison to those offered
20 by Dr. Ali; (4) Drs. Monie, Champlin, and McDaniel are not in the practice of rendering opinions
21 for pay; and (5) contrary to the ALJ’s statement, Plaintiff’s representative did not agree with Dr.
22 Genest’s testimony that there was no objective evidence to support the opinions of Drs. Monie
23 and McMullin.⁷ *Id.* at 36-38.

24 For the reasons discussed below, the Court rejects these “housekeeping”
25 arguments because the treating source opinions were properly discounted by the ALJ. In
26 particular, Dr. Monie’s opinions are conclusory and unsupported, are based on Plaintiff’s
27 subjective complaints, and do not go to the ultimate issue of Plaintiff’s residual functional
28 capacity. Similarly, Dr. Champlin’s opinions are unexplained and conclusory. Dr. McDaniel’s

⁷ Plaintiff raises no specific arguments related to the ALJ’s evaluations of Dr. McMullin’s opinions, which the ALJ gave little weight.

1 opinions are likewise unsupported, conclusory, and appear to be based solely on Plaintiff's
2 subjective complaints.

3 i. Dr. Monie

4 As to Dr. Monie, a treating source whose opinions the ALJ gave little weight, the
5 ALJ stated:

6 Herbert Monie, M.D., completed a CalWORKs work exemption form in
7 February 2014. Dr. Monie indicated that the claimant has chronic
8 conditions that precluded the claimant from working more than 2 hours
9 per day, 4 days per week since a motor vehicle accident in August 2012.
10 He said that she was not in treatment, but "Anna" wrote on the form that
11 she was taking prescription medication for "several" unspecified mental
12 health issues (Ex. 17F/2, 22F/20). The form also relied on the claimant's
13 need to attend AA and NA twice a week in evaluating her exception and
14 said that she has done home care in the past and worked at a pizza shop
15 (Ex. 17F/3).

16 This opinion is given little weight because it is conclusory and was not a
17 statement of the most that the claimant could do despite her impairments.
18 For example, it did not evaluat[e] her abilities to sit, stand, lift, carry,
19 understand, remember, and carry out tasks. Instead, it was a conclusory
20 form for the purpose of exempting the claimant from a CalWORKs
21 requirement. Dr. Monie saw the claimant in February 2014 in order to get
22 the form completed (Ex. 16F/16). Dr. Monie did not identify any
23 abnormal findings. Moreover, aside from "social anxiety," he did not
24 identify what specific conditions resulted in the limitations set forth on the
25 form. In fact, she did not complain of any specific limitations of her hands
26 to Dr. Monie and he diagnosed merely "social phobia," "pain in limb"
27 unspecified, "amphetamine abuse" in remission, and "marijuana" use. Dr.
28 Monie prescribed merely 20 mg Prozac and an inhaler (Ex. 16F/16-18).
But, as explained above, the claimant did not continue taking Prozac, and
was stable mentally without it. Thus, this opinion appears to be based
primarily on the claimant's subjective complaints rather than on any
objective findings. His opinion is not consistent with the other
examinations and opinions in the record or the claimant's functioning as
discussed above.

CAR 793-94.

23 Plaintiff raises a number of arguments challenging the ALJ's evaluation of Dr.
24 Monie's opinions. See ECF No. 21, pgs. 39-42. First, Plaintiff contends the ALJ failed "to cite
25 an iota of medical record evidence as support for any of her contentions." Id. at 40. Second, the
26 ALJ failed to explain how prescribing "merely 20 mg of Prozac" undermines Dr. Monie's
27 opinions. See id. at 41. Third, the ALJ's reference to the lack of complaints regarding Plaintiff's
28 hands is irrelevant given that Dr. Monie "was opining only on mental health issues." Id. Finally,

1 Plaintiff accuses the ALJ of “passive aggressiveness” towards the court’s prior order in the first
2 appeal. Id. at 41-42. According to Plaintiff: “Every justification concocted by the ALJ for
3 discrediting Dr. Monie is made up, contrary to the evidence or an improper attempt to recycle and
4 disguise rationales this Court already rejected.” Id. at 42.

5 Again, the Court reminds Plaintiff’s counsel of his obligation to maintain a
6 respectful tone when discussing an ALJ. Plaintiff’s unveiled suggestion that ALJ French acted
7 inappropriately fails to demonstrate counsel’s mindfulness of this duty.

8 Turning back to the ALJ’s evaluation of Dr. Monie’s opinions, the ALJ cites the
9 following exhibits: Exhibits 16F, 17F, 22F. Exhibit 16F consists of medical records from Shasta
10 Community Health Center dated June 23, 2010, through June 2, 2014. See CAR 726-53. Exhibit
11 17F contains CalWORKs exemption forms completed by Dr. Monie. See id. at 754-59. Exhibit
12 22F consists of CalWORKs exemption forms dated May 9, 2012, through April 20, 2018. See id.
13 at 1056-85. Given the ALJ’s citations to this evidence of record, the Court rejects Plaintiff’s first
14 contention that the ALJ failed to cite any evidence.

15 As to Prozac, a review of the record reveals why the dosage prescribed by Dr.
16 Monie is relevant. First, as Dr. Monie reports in Exhibit 16F, Plaintiff said “Prozac make[s] her
17 happy.” Id. at 741. Second, at the time of the doctor’s treatment, Plaintiff was only prescribed
18 one drug – Prozac – and an inhaler. See id. at 743. These facts reasonably indicate that
19 Plaintiff’s symptoms were well-controlled and not causing Plaintiff much problem. Finally, as the
20 ALJ noted, Plaintiff stopped taking Prozac. The Court therefore rejects Plaintiff’s second
21 contention that the ALJ’s reference to Prozac is unexplained.

22 In Exhibit 16F, Dr. Monie reported that he saw Plaintiff on February 26, 2014,
23 related to a request for a CalWORKs exemption form. See id. at 741. Dr Monie notes that
24 Plaintiff was injured in a “quad accident” in July 2012. Id. This is interesting in and of itself
25 given that Plaintiff alleges she became disabled in August 2008 and filed her application for
26 disability benefits in May 2012. Dr. Monie diagnosed “social phobia” and “pain in limb.” Id. at
27 742. Because Dr. Monie diagnosed “pain in limb,” which relates to physical and not mental
28

1 impairments, the Court rejects Plaintiff’s third argument that Dr. Monie was “opining only on
2 mental health issues.”

3 The Court also rejects Plaintiff’s accusation that the ALJ “concocted” reasons to
4 “recycle and disguise” rationales rejected in the prior appeal. In Plaintiff’s first district court
5 case, the court concluded the ALJ’s analysis of Dr. Monie’s opinion was insufficient because,
6 while the ALJ stated that Dr. Monie had only seen Plaintiff once in February 2014, the record
7 showed otherwise. See ECF No. 21, pg. 11 in Thomas v. Berryhill, E. Dist. Cal. case no. 2:16-
8 CV-2060-DB. In contrast, the ALJ’s second hearing decision, which is the subject of the current
9 appeal, makes no such misstatement of the record. Moreover, the current hearing decision
10 provides a detailed explanation of the reasons for rejecting Dr. Monie’s opinions. In particular,
11 the ALJ noted that Dr. Monie’s opinions of such extreme limitations is based more on Plaintiff’s
12 subjective complaints and desire to be exempted from welfare-to-work requirements than it is on
13 objective findings noted by the doctor. This conclusion is supported by Dr. Monie’s own records
14 which reveal normal objective findings on examination. See e.g. CAR 742.

15 Plaintiff’s specific “housekeeping” and other arguments notwithstanding, the ALJ
16 does not err by discrediting a conclusory opinion that is unsupported by the doctor’s own
17 objective findings. See Meanel, 172 F.3d at 1113; see also Magallanes, 881 F.2d at 751.

18 ii. Dr. Champlin

19 As to Dr. Champlin, also a treating source whose opinions the ALJ gave little
20 weight, the ALJ stated:

21 . . . John Champlin, M.D., at Shasta County Mental Health, completed a
22 CalWORKs Welfare-To-Work Exemption request form in May 2012 in
23 which he indicated that the claimant became disabled on September 30,
24 2008, and her condition was expected to last until May 2013. He stated
25 she was unable to work due to her inability to focus and maintain attention
26 for completion of tasks (Ex. 22F/17-19). His opinion is not consistent
27 with the medical records or objective clinical findings. His opinion is not
28 consistent with the other examinations and opinions in the record or the
claimant’s functioning. In addition, there is no basis for the time period
set forth – Dr. Champlin does not explain why she was disabled in 2008
and would be disabled until 2013. He did not set forth a diagnosis or
discuss any particular limitations, other than a statement that the claimant
could not focus or concentrate ([Ex.] 22F/19).

CAR 793.

1 Plaintiff argues the “ALJ fails spectacularly” to provide a valid rationale to
2 discredit Dr. Champlin’s opinions. ECF No. 21 pgs. 38-39. According to Plaintiff:

3 The ALJ fails to cite even one page from the 1266-page
4 Administrative Record she contends is “not consistent” with Dr.
5 Champlin’s work-preclusive opinions. The ALJ fails to identify a single
6 “objective clinical finding” that is “not consistent” with Dr. Champlin’s
7 work-preclusive opinions. The ALJ fails to identify a single “examination”
8 that is “not consistent” with Dr. Champlin’s work-preclusive opinions.
9 The ALJ fails to identify a single “opinion in the record” that is “not
10 consistent” with Dr. Champlin’s work-preclusive opinions. Finally, the
11 ALJ fails to identify a single aspect of “claimant’s functioning” that is
12 “not consistent” with Dr. Champlin’s work-preclusive opinions. Even if
13 the ALJ’s assertions were correct, her failure to identify an iota of
14 evidence, much less substantial evidence, in support is reversible error
15 standing alone.

16 Id. at 39.

17 Plaintiff’s argument that the ALJ failed to cite to any portion of the record in
18 support of her evaluation of Dr. Champlin’s opinions is belied by the hearing decision.
19 Specifically, the ALJ cited Dr. Champlin’s own report at Exhibit 22F, pages 17-19. Moreover,
20 while the ALJ does not do so by page number, the ALJ also cites to the other objective findings
21 and opinions of record, which are thoroughly summarized in the hearing decision.

22 As indicated above, Exhibit 22F consists of CalWORKs exemption forms dated
23 May 9, 2012, through April 20, 2018. See id. at 1056-85. On May 8, 2012 – years after Plaintiff
24 said she became disabled and weeks prior to Plaintiff filing her claim for disability benefits – Dr.
25 Champlin stated Plaintiff is “unable to work” due to inability to maintain attention to complete
26 tasks. See id. at 1072, 1074. The doctor also stated Plaintiff’s inability to work was expected to
27 last until May 8, 2013 – one year later. See id. at 1073. These opinions were properly discredited
28 because the ultimate issue of disability is reserved to the Commissioner and because, as the ALJ
noted, Dr. Champlin provides no explanation as to why he believed Plaintiff’s disability would
only last for one year, a finding which is also inconsistent with the doctor’s statement that
Plaintiff’s condition is “chronic.” Id. Dr. Champlin simply did not provide any opinions
concerning the most Plaintiff can do despite her impairments and limitations. As such, the ALJ
did not err in rejecting the doctor’s opinion on the ultimate issue of disability.

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1 iii. Dr. McDaniel

2 The ALJ also addressed opinions provided by treating source Dr. McDaniel:

3 . . .Dr. McDaniel completed. . . CalWORKs exemption forms with
4 conclusory statements such as “not employable” (Ex. 22F/10). He stated
5 that the claimant could “never” balance, stoop, kneel, crouch, crawl, or
6 reach, with no explanation for these limitations ([Ex.] 22F.10). Dr.
7 McDaniel indicated repetitive hand/finger motions were limited due to
8 carpal tunnel and repetitive foot motions were limited due to plantar
9 fasciitis (Ex. 22F/22). His examination noted some carpal tunnel findings
10 that would account for the limitations in lifting, handling, and fingering.
11 The limitations he proposed in lifting, handling, and fingering, although
12 not clearly quantified, are supported and incorporated into the residual
13 functional capacity set forth herein. However, his examinations do not
14 support limitations in standing [or] walking for no more than 2 hours and
15 sitting for no more than 2 hours (Ex. 22F/22). Moreover, there is no
16 ongoing treatment for any persistent plantar fasciitis documented in the
17 record (Ex. 1F-24F). He did not prescribe any pain medications, specialty
18 referrals, chiropractic adjustments, physical therapy, steroid injections,
19 medical imagery, or any other alternative measures to control her alleged
20 pain complaints. His opinion is not consistent with the other examinations
21 and opinions in the record or the claimant’s functioning as discussed in
22 this decision.

23 CAR 794.

24 The ALJ added that Dr. McDaniel’s opinions are inconsistent with evidence that
25 Plaintiff’s conditions are well-controlled with only sporadic treatment showing few objective
26 findings. See id. at 795. The ALJ also found that Dr. McDaniel’s opinions are inconsistent with
27 the diagnostic imaging evidence. See id.

28 The ALJ further discussed CalWORKs exemptions forms completed by Dr.
29 McDaniel as follows:

30 In August 2015, primary care provider Dr. McDaniel completed a
31 CalWORKs form indicating the claimant could not work due to social
32 anxiety and asthma, which had existed since 2008 (Ex. 22F/9-10, 23). In
33 May 2016, Dr. McDaniel stated her unspecified condition had been
34 present for 6 months and prevented work activity (Ex. 22F/24). In May
35 2017, he completed a form indicating she had been unable to work due to
36 unspecified conditions present since “birth” (Ex. 22F/29). In April 2018,
37 Dr. McDaniel completed a CalWORKs form indicating the claimant’s
38 conditions had been present since 2008. She could stand and walk 0-2
39 hours and could sit 0-2 hours due to back pain. Use of hands and fingers
40 was limited for repetitive motions due to tingling in her fingers. Use of
41 her feet for repetitive motions was limited due to right foot numbness.
42 She could occasionally lift 20 pounds and could occasionally perform
43 postural activities. He indicated she could not function in a work-like
44 setting due to “high stress” (Ex. 22F/4-5, 27-28). These opinions are

1 given little weight because they are not supported by his treatment records,
2 which document few objective findings.

3 Id. at 796.

4 The ALJ added:

5 . . . [Plaintiff] sought little treatment for back, wrist, or joint complaints at
6 this clinic (Ex. 23F). In August 2015, it was noted that she “moves well”
7 despite her pain complaints and her scoliosis was “stable” (Ex. 23F/31).
8 In May 2016, Dr. McDaniel stated, “she wanted a form for welfare filled
9 out that she is too sick to attend classes and this form was completed
10 exempting her for back pain and breast pain and peptic ulcer, motivation
11 out of these conditions impeded by quest for disability.” Examination
12 revealed only some dense breast tissue and some nonspecific tenderness of
13 her breasts and abdomen. There were no abnormal examination findings
14 of her back or joints and no new treatment for her back or joint complaints
15 was prescribed (Ex. 23/24-25). Although Dr. McDaniel[‘s] records show
16 that she had been prescribed hydrocodone and ibuprofen in 2016, she
17 reported she only uses marijuana for pain. She complained of back and
18 leg pain in May 2017 but stated her symptoms were controlled with
19 marijuana and she refused medications. Examination revealed merely
20 “mild scoliosis” and she walked favoring her right leg (Ex. 23/17, 22-23).
21 However, these findings were transient as prior and subsequent
22 examinations revealed few, if any, musculoskeletal findings or gait
23 disturbances (Ex. 23F). Radiographs of the lumbar spine revealed merely
24 “mild” rotatory levoconvex curvature and “mild” degenerative disc space
25 narrowing (Ex. 23F/55).
26 Throughout his records, Dr. McDaniel acknowledged that her scoliosis
27 was “minor” and “scoliosis is nothing to qualify” for disability. . . .
28 Moreover, Dr. McDaniel noted that her impairments were “all stable” (Ex.
22F/27). . . .

Id. at 796-97.

19 Plaintiff first contends that, contrary to the ALJ’s assertion that Dr. McDaniel only
20 saw Plaintiff once a year primarily for the purposes of obtaining renewed CalWORKs exemption
21 forms, Dr. McDaniel saw Plaintiff “far more frequently.” ECF No. 21, pgs. 43-44. Second,
22 Plaintiff accuses the ALJ of intentionally ignoring the longitudinal medical record which,
23 according to Plaintiff, supports Dr. McDaniel’s opinions. See id. at 44-45. Third, the ALJ erred
24 in concluding that Plaintiff never sought treatment for her wrist or back issues at Dr. McDaniel’s
25 clinic. See id. at 45. Finally, Plaintiff argues the ALJ’s conclusion that Dr. McDaniel’s opinions
26 relating to mental health issues carry no weight because Dr. McDaniel did not provide mental
27 health treatment is flawed given that Dr. McDaniel, as a general practitioner and treating
28 physician, is qualified to opine as to mental health issues. See id.

1 As noted by the ALJ, Dr. McDaniel’s records are contained in Exhibits 22F and
2 23F. See CAR 1056-78. On June 8, 2015, Dr. McDaniel indicated that Plaintiff’s various
3 conditions which prevent work have existed since 2008. See id. at 1078. On August 8, 2015, Dr.
4 McDaniel completed a form as to Plaintiff’s mental capacities and, for each category of mental
5 functioning (i.e., daily activities, social functioning, etc.), the doctor noted simply “cannot work.”
6 Id. at 1064. Dr. McDaniel opined that Plaintiff can never lift, carry, climb, balance, stoop, kneel,
7 crouch, crawl, or reach in any direction. Id. at 1065. Again, the doctor concluded Plaintiff is “not
8 employable.” Id. Dr. McDaniel did not cite any objective findings to support these opinions.
9 See id. at 1064-65. On May 12, 2016, Dr. McDaniel stated Plaintiff’s conditions preventing work
10 existed since “6 mo.” Id. at 1079. On May 2, 2017, however, Dr. McDaniel stated that Plaintiff’s
11 conditions existed since birth. See id. at 1084. On April 20, 2018, Dr. McDaniel stated Plaintiff
12 required no assistance in activities of daily living, suggesting a high degree of improvement in
13 symptoms since August 2015 when the doctor indicated Plaintiff “cannot work” due to limitations
14 in activities of daily living. See id. at 1080. Moreover, Dr. McDaniel’s chart notes at Exhibit
15 23F reflect grossly normal findings. See id. at 1086-1134.

16 The Court rejects Plaintiff’s various arguments and instead focuses on the elephant
17 in the room which Plaintiff ignores – Dr. McDaniel’s various statements undermining his own
18 findings. At various times, the doctor states Plaintiff’s conditions have existed for the past six
19 months, since 2008, and since birth – all of which are inconsistent and, thus, unreliable.
20 Moreover, while the doctor states that Plaintiff’s conditions are disabling and chronic with no
21 anticipated end date, Dr. McDaniel initially opined that Plaintiff can never engage in postural
22 activities and, later, that she can engage in some postural activities on an occasional basis only.
23 This either shows inconsistency among the doctor’s various opinions or substantial improvement
24 in Plaintiff’s conditions over time. Finally, the chart notes at Exhibit 23F are devoid of abnormal
25 objective findings to the degree as would support any of the doctor’s varying and extreme
26 conclusions.

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1 As with Dr. Monie, and notwithstanding Plaintiff “housekeeping” and other
2 arguments, the ALJ did not err in rejecting Dr. McDaniel’s conclusory unsupported opinions. See
3 Meanel, 172 F.3d at 1113; see also Magallanes, 881 F.2d at 751.

4 **E. Lay Witness Evidence**

5 In determining whether a claimant is disabled, an ALJ generally must consider lay
6 witness testimony concerning a claimant's ability to work. See Dodrill v. Shalala, 12 F.3d 915,
7 919 (9th Cir. 1993); 20 C.F.R. §§ 404.1513(d)(4) & (e), 416.913(d)(4) & (e). Indeed, “lay
8 testimony as to a claimant's symptoms or how an impairment affects ability to work is competent
9 evidence . . . and therefore cannot be disregarded without comment.” See Nguyen v. Chater, 100
10 F.3d 1462, 1467 (9th Cir. 1996). Consequently, “[i]f the ALJ wishes to discount the testimony of
11 lay witnesses, he must give reasons that are germane to each witness.” Dodrill, 12 F.3d at 919.
12 When rejecting third party statements which are similar in nature to the statements of plaintiff, the
13 ALJ may cite the same reasons used by the ALJ in rejecting the plaintiff’s statement. See
14 Valentine v. Commissioner Soc. Sec. Admin., 574 F.3d 685, 694 (9th Cir. 2009) (approving
15 rejection of a third-party family member’s testimony, which was similar to the claimant’s, for the
16 same reasons given for rejection of the claimant’s complaints).

17 At Step 4, the ALJ considered third-party lay witness evidence from Plaintiff’s
18 friend, Susan Smith. See CAR 790-91. The ALJ stated:

19 A third-party report was provided by Susan Smith, the claimant’s friend,
20 which is generally supportive of the claimant’s allegations (Ex. 4E).
21 However, it is given only some weight. Ms. Smith is not a medical
22 source. Moreover, her report, like the claimant’s allegations, is not
23 consistent with the preponderance of the opinions and observations by
24 medical doctors in this case.

23 Id.

24 Plaintiff argues:

25 . . . The ALJ’s first basis, that “Ms. Smith is not a medical source”
26 is not legally germane. First, Ms. Smith was providing percipient witness
27 testimony not medical opinion, whether she was a medical professional is
28 irrelevant. Second, the rationale has been repeatedly held legally improper.
Diedrich v. Berryhill, 874 F.3d 634, 640 (9th Cir. 2017) (“The fact that lay
testimony and third-party function reports may offer a different
perspective than medical records alone is precisely why such evidence is
valuable at a hearing.”).

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IV. CONCLUSION

For the foregoing reasons, this matter will be remanded under sentence four of 42 U.S.C. § 405(g) for further development of the record and/or further findings addressing the deficiencies noted above.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s motion for summary judgment, ECF No. 21, is granted;
2. Defendant’s motion for summary judgment, ECF No. 22, is denied;
3. The Commissioner’s final decision is reversed and this matter is remanded for further proceedings consistent with this order; and
4. The Clerk of the Court is directed to enter judgment and close this file.

Dated: March 31, 2021



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE