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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 TAMMY J. NYBERG,

12 Plaintiff,

13 v.

14 COMMISSIONER OF SOCIAL  
15 SECURITY,

16 Defendant.

No. 2:20-CV-0338-DMC

MEMORANDUM OPINION AND ORDER

17  
18 Plaintiff, who is proceeding with retained counsel, brings this action for judicial  
19 review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g).  
20 Pursuant to the written consent of all parties, ECF Nos. 7 and 8, this case is before the  
21 undersigned as the presiding judge for all purposes, including entry of final judgment. See 28  
22 U.S.C. § 636(c). Pending before the court are the parties' briefs on the merits, ECF Nos. 13 and  
23 14.

24 The Court reviews the Commissioner's final decision to determine whether it is:  
25 (1) based on proper legal standards; and (2) supported by substantial evidence in the record as a  
26 whole. See Tackett v. Apfel, 180 F.3d 1094, 1097 (9th Cir. 1999). "Substantial evidence" is  
27 more than a mere scintilla, but less than a preponderance. See Saelee v. Chater, 94 F.3d 520, 521  
28 (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 Commissioner’s final decision is affirmed.

## 16 I. THE DISABILITY EVALUATION PROCESS

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

- |    |        |   |
|----|--------|---|
| 20 | Step 1 | Determination whether the claimant is engaged in                |
| 21 |        | substantial gainful activity; if so, the claimant is presumed   |
|    |        | not disabled and the claim is denied;                           |
| 22 | Step 2 | If the claimant is not engaged in substantial gainful activity, |
| 23 |        | determination whether the claimant has a severe                 |
| 24 |        | impairment; if not, the claimant is presumed not disabled       |
|    |        | and the claim is denied;  |
| 25 | Step 3 | If the claimant has one or more severe impairments,             |
| 26 |        | determination whether any such severe impairment meets          |
| 27 |        | or medically equals an impairment listed in the regulations;    |
|    |        | if the claimant has such an impairment, the claimant is         |
|    |        | presumed disabled and the claim is granted;                     |

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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  
claimant's residual functional capacity; if not, the claimant  
is presumed not disabled and the claim is denied;

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

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

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

18 The claimant establishes a prima facie case by showing that a physical or mental  
19 impairment prevents the claimant from engaging in previous work. See Gallant v. Heckler, 753  
20 F.2d 1450, 1452 (9th Cir. 1984); 20 C.F.R. §§ 404.1520(f) and 416.920(f). If the claimant  
21 establishes a prima facie case, the burden then shifts to the Commissioner to show the claimant  
22 can perform other work existing in the national economy. See Burkhart v. Bowen, 856 F.2d  
23 1335, 1340 (9th Cir. 1988); Hoffman v. Heckler, 785 F.2d 1423, 1425 (9th Cir. 1986); Hammock  
24 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 March 9, 2017. See CAR 19.<sup>1</sup> In the application, Plaintiff claims disability began on March 2, 2017. See id. Plaintiff's claim was initially denied. Following denial of reconsideration, Plaintiff requested an administrative hearing, which was held on February 14, 2019, before Administrative Law Judge (ALJ) David M. Blume. In a March 7, 2019, decision, the ALJ concluded Plaintiff is not disabled based on the following relevant findings:

1. The claimant has the following severe impairment(s): cervical lumbar degenerative disc disease, depression, and PTSD;
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: light work; she can perform occasional postural activities; she cannot climb ladders, ropes, scaffolds, or work around hazards; she can perform simple, repetitive tasks in a non-public setting;
4. Considering the claimant's age, education, work experience, residual functional capacity, and vocational expert testimony, there are jobs that exist in significant numbers in the national economy that the claimant can perform.

See id. at 21-28.

After the Appeals Council declined review on December 10, 2019, this appeal followed.

## III. DISCUSSION

In her opening brief, Plaintiff argues: (1) the ALJ failed to properly evaluate the opinion of examining psychologist, Chester Sunde, Psy.D; and (2) the ALJ failed to properly evaluate the opinions of state agency medical consultants, L. Colsky, M.D., and H. Abrahimi, Psy.D.

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<sup>1</sup> Citations are the to the Certified Administrative Record (CAR) lodged on April 28, 2020. See ECF No. 11.

1 “The ALJ must consider all medical opinion evidence.” Tommasetti v. Astrue,  
2 533 F.3d 1035, 1041 (9th Cir. 2008) (citing 20 C.F.R. § 404.1527(b)). The ALJ errs by not  
3 explicitly rejecting a medical opinion. See Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir.  
4 2014). The ALJ also errs by failing to set forth sufficient reasons for crediting one medical  
5 opinion over another. See id.

6 Under the regulations, only “licensed physicians and certain qualified specialists”  
7 are considered acceptable medical sources. 20 C.F.R. § 404.1513(a); see also Molina v. Astrue,  
8 674 F.3d 1104, 1111 (9th Cir. 2012). Where the acceptable medical source opinion is based on  
9 an examination, the “. . . physician’s opinion alone constitutes substantial evidence, because it  
10 rests on his own independent examination of the claimant.” Tonapetyan v. Halter, 242 F.3d 1144,  
11 1149 (9th Cir. 2001). The opinions of non-examining professionals may also constitute  
12 substantial evidence when the opinions are consistent with independent clinical findings or other  
13 evidence in the record. See Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Social  
14 workers are not considered an acceptable medical source. See Turner v. Comm’r of Soc. Sec.  
15 Admin., 613 F.3d 1217, 1223-24 (9th Cir. 2010). Nurse practitioners and physician assistants  
16 also are not acceptable medical sources. See Dale v. Colvin, 823 F.3d 941, 943 (9th Cir. 2016).  
17 Opinions from “other sources” such as nurse practitioners, physician assistants, and social  
18 workers may be discounted provided the ALJ provides reasons germane to each source for doing  
19 so. See Popa v. Berryhill, 872 F.3d 901, 906 (9th Cir. 2017), but see Revels v. Berryhill, 874  
20 F.3d 648, 655 (9th Cir. 2017) (quoting 20 C.F.R. § 404.1527(f)(1) and describing circumstance  
21 when opinions from “other sources” may be considered acceptable medical opinions).

22 The weight given to medical opinions depends in part on whether they are  
23 proffered by treating, examining, or non-examining professionals. See Lester v. Chater, 81 F.3d  
24 821, 830-31 (9th Cir. 1995). Ordinarily, more weight is given to the opinion of a treating  
25 professional, who has a greater opportunity to know and observe the patient as an individual, than  
26 the opinion of a non-treating professional. See id.; Smolen v. Chater, 80 F.3d 1273, 1285 (9th  
27 Cir. 1996); Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987). The least weight is given to the  
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1 opinion of a non-examining professional. See Pitzer v. Sullivan, 908 F.2d 502, 506 & n.4 (9th  
2 Cir. 1990).

3 At Step 4, the ALJ evaluated the medical opinion evidence to determine Plaintiff's  
4 residual functional capacity. See CAR 25-26. The ALJ gave "some weight" to the opinions of  
5 state agency consultants, Drs. Chiang and Eskander, who both opined Plaintiff can perform a  
6 range of medium work. Id. at 25. The ALJ gave "great weight" to the opinion of Dr. Sunde, who  
7 conducted a mental status examination. Id. at 26. The ALJ also gave "great weight" to the  
8 opinions of state agency consultants, Drs. Colsky and Abrahimi, who provided opinions as to  
9 Plaintiff's mental limitations. Id. Plaintiff challenges the ALJ's analysis as to Drs. Sunde,  
10 Colsky, and Abrahimi. Plaintiff raises no argument regarding the ALJ's partial rejection of the  
11 opinions offered by Drs. Chiang and Eskander.

12 As to Drs. Sunde, Colsky, and Abrahimi, the ALJ stated:

13 Consultative psychologist Dr. Sunde opined that the claimant could  
14 complete simple tasks with mild limitations and complex tasks with  
15 moderate limitations. She could interact with others with moderate  
16 limitations. She had moderate deficits in her ability to comply with job  
17 rules, changes, and maintaining persistence and pace (Ex. 5F).

18 State agency psychiatric and psychological consultants L. Colsky, M.D.,  
19 and Heather Abrahimi, Psy.D., agreed with Dr. Sunde and opined the  
20 claimant could perform simple work with limited social interaction (Es.  
21 2A, 4A).

22 These opinions are given great weight because they are generally  
23 consistent with each other with only minor differences. Dr. Sunde's  
24 opinion was based on direct examination, objective testing, and personal  
25 observation. The State agency consultants provided assessments that are  
26 consistent with Dr. Sunde's limitations and the previously discussed  
27 treatment and findings in the record.

28 CAR 25.

29 **A. Dr. Sunde**

30 Dr. Sunde's report is contained in the record at Exhibit 5F. See CAR 452-55. Dr.  
31 Sunde reported the following history of complaints:

32 The claimant states that she had suffered from PTSD for much of her life.  
33 She states it started with abuse from her father, who then shot himself in  
34 the head with a gun, and she heard the shot. She came out to find out what  
35 had happened. She heard and saw him gurgling and dying. She states  
36 after that incident, her mother was abusive toward her, her first husband

1 was abusive toward her, and her ex-boyfriend was abusive toward her, so  
2 she suffered a lot of physical and emotional abuse over the years. She  
3 states she has had problems with anxiety ever since finding her father.  
4 She states she did not finish high school after that incident because of  
5 being overwhelmed with anxiety. She used to have severe problems with  
6 recurrent nightmares, though they have improved over the years, but the  
7 anxiety has stayed. She states she has an exaggerated startle response.  
8 She is hypervigilant when she is in public. She gets extremely anxious in  
9 public and tends to avoid going places as much as possible. She states that  
10 she is depressed most of the time, in general, with a history of severe  
11 depressive episodes, but mostly it is in the mild to moderate depression  
12 that is there all the time. She gets emotional when she thinks about the  
13 past, but she states she currently has a husband that does not abuse her,  
14 and that has helped.

CAR 452.

15 Dr. Sunde reported that, at the time of his evaluation in May 2017, Plaintiff was  
16 taking two medications for her mental impairment, Cymbalta and a second drug Plaintiff could  
17 not name. See id. at 452. Dr. Sunde noted that Plaintiff's "concentration was impaired  
18 throughout the interview" and that persistence was "fair" and pace "slow." Id. at 454. Dr. Sunde  
19 rendered the following opinions:

- 20 1. Plaintiff's ability to remember, understand, and complete simple  
21 commands is mildly impaired.
- 22 2. Plaintiff's ability to remember, understand, and complete complex  
23 commands is moderately impaired.
- 24 3. Plaintiff's ability to interact appropriately with supervisors, co-workers,  
25 and the public is moderately impaired.
- 26 4. Plaintiff's ability to comply with job rules is moderately impaired.
- 27 5. Plaintiff's ability to respond to changes in a normal workplace setting  
28 is moderately impaired.
6. Plaintiff's ability to maintain persistence and pace in a normal  
workplace setting is moderately impaired.

Id. at 455.

29 According to Plaintiff, while the ALJ accepted Dr. Sunde's opinion that Plaintiff is  
30 moderately limited in her ability to interact with the public, the ALJ erred in failing to provide  
31 any rationale for rejecting the doctor's opinion that Plaintiff is moderately limited in her ability to  
32 interact with supervisors and co-workers. See ECF No. 13, pgs. 6-7. In opposition, Defendant

1 argues:

2 . . . [T]he ALJ's RFC accounted for Plaintiff's moderate limitations  
3 in social functioning, and Plaintiff cannot establish error. *Gann v.*  
4 *Berryhill*, No. 1:17-CV-00325-SKO, 2018 WL 2441581, at \*10 (E.D. Cal.  
5 May 31, 2018) ("A limitation to simple tasks performed in unskilled work  
6 adequately encompasses moderate limitations with social functioning  
7 including getting along with peers and responding appropriately to  
8 supervisors); *Guerrero v. Colvin*, No. 1:15-CV-0962-BAM, 2016 WL  
9 5661722, at \*6 (E.D. Cal. Sept. 29, 2016) (limitation to "simple repetitive  
10 tasks' . . . adequately capture[d] Drs. Cushman and Dahl's opinions that  
11 Plaintiff has moderate impairments in social functioning") *see also*  
12 *Ramirez v. Comm'r of Soc. Sec.*, No. 1:18-CV-01322-SAB, 2019 WL  
13 4201437, at \*18 (E.D. Cal. Sept. 5, 2019) ("any error would be harmless  
14 because a limitation to simple and routine tasks adequately encompasses a  
15 moderate limitation on social functioning").

16 ECF No. 14, pgs. 7-8.

17 The Court agrees with Defendant. Dr. Sunde's moderate limitations in social  
18 interactions are adequately encompassed by the ALJ's finding that Plaintiff is limited to simple,  
19 repetitive tasks. *See Thomas v Barnhart*, 278 F.3d 947, 955 (9th Cir. 2002); *Stubbs-Danielson v.*  
20 *Astrue*, 539 F.3d 1169 (9th Cir. 2008); *see also Rogers v. Comm'r of Soc. Sec.*, 490 F. App'x 15,  
21 17-18 (9th Cir. 2012); *Gann v. Berryhill*, 2018 WL 2441581, at \*10 (E. Dist. Cal. 2018); *Menges*  
22 *v. Berryhill*, 2018 WL 1567786, at \*8 (E. Dist. Cal. 2018); *Messerli v. Berryhill*, 2017 WL  
23 3782986, at \*11 (E. Dist. Cal. 2017); *Henry v. Colvin*, 2016 WL 164956, at \*18 (E. Dist. Cal.  
24 2016); *Langford v. Astrue*, 2008 WL 2073951, at \*7 (E. Dist. Cal. 2008).

25 **B. Drs. Colsky and Abrahimi**

26 The opinions of Drs. Colsky and Abrahimi, who reviewed records, are contained  
27 in Exhibits 2A and 4A, respectively. *See* CAR 65-80, 82-100. Dr. Colsky opined, among other  
28 things, that Plaintiff is "[c]apable of 1-2 step tasks with minimal social interaction" based on at  
most moderate limitations. *Id.* at 78. Dr. Abrahimi opined, among other things, that Plaintiff "is  
able to . . . interact with co-workers in a non-collaborative and superficial basis" based on at most  
moderate limitations. *Id.* at 97. Plaintiff argues the ALJ erred in rejecting these doctors' opinions  
that Plaintiff is limited to one- to two-step tasks and that she can only interact with co-workers in  
a non-collaborative setting. *See* ECF No. 13, pgs. 8-9.

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1 As to Dr. Colsky, Defendant argues:

2 Dr. Colsky opined that Plaintiff was capable of performing of 1-2  
3 step tasks with minimal social interaction (AR 78). Dr. Colsky also opined  
4 that Plaintiff was capable of performing “LPSRT” (AR 74); and had  
5 moderate limitations in carrying out detailed instructions; maintaining  
6 concentration of extended period; work in coordination with others;  
7 complete a normal work week; and interact with peers and the public (AR  
8 77-78). So although Dr. Colsky stated that Plaintiff could perform the  
9 more restrictive 1-2 step tasks, Dr. Colsky also opined that Plaintiff could  
10 perform the less restrictive simple, repetitive tasks. Since the RFC is the  
11 *maximum* capacity, simple repetitive tasks was the most Plaintiff could do  
12 based on Dr. Colsky’s opinion. Accordingly, substantial evidence  
13 supported the ALJ’s reliance on the maximum capacity contained in Dr.  
14 Colsky’s opinion.

15 ECF No. 14, pg. 9.

16 Here, Dr. Colsky opined that Plaintiff is not significantly limited in her ability to  
17 carry out very short and simple instructions. See CAR 77. The doctor also opined that Plaintiff is  
18 moderately limited in her ability to carry out detailed instructions. See id. As to Plaintiff’s  
19 mental residual functional capacity, Dr. Colsky rendered two opinions. She opined both that  
20 Plaintiff can engage in “SRT” – simple repetitive tasks – and that Plaintiff could only engage in  
21 “1-2 step tasks.” See id. at 74, 78. As Defendant correctly notes, residual functional capacity  
22 describes the most the claimant can do despite his or her limitations. See 20 C.F.R.  
23 §§ 404.1545(a), 416.945(a) (2003); see also Valencia v. Heckler, 751 F.2d 1082, 1085 (9th Cir.  
24 1985) (residual functional capacity reflects current “physical and mental capabilities”). It is clear  
25 that Dr. Colsky opined that the most Plaintiff can do is simple repetitive work, which is precisely  
26 the residual functional capacity described by the ALJ. Because the ALJ accounted for Dr.  
27 Colsky’s opinion as to the most Plaintiff can do, the Court finds no error in the ALJ’s analysis.

28 As to Dr. Abrahimi, Defendant asserts:

29 . . . Dr. Abrahimi noted that “[o]verall MER supports SRT with  
30 LPC which is consistent with Dr. Sunde’s [opinion]” (AR 93). Dr.  
31 Abrihimi further opined that Plaintiff had no significant limitations in her  
32 ability to carry out short and simple instructions, but had moderate  
33 limitations in carrying out detailed instructions; maintaining concentration  
34 of extended period; work in coordination with others; complete a normal  
35 work week; and interact with peers and the public (AR 96-97). Dr.  
36 Abrihimi opined that Plaintiff was capable of “understanding,  
37 remembering, and sustaining concentration, pace and persistence for  
38 simple routines thought a normal workday/workweek” (AR 97). SRT is a  
common abbreviation for simple, repetitive tasks. *See, e.g., Samantha*

1 *Heather B. v. Saul*, No. 2:19-CV-04917-KES, 2020 WL 1289169, at \*7  
2 (C.D. Cal. Mar. 18, 2020). As discussed above, an RFC for simple,  
3 repetitive tasks is consistent with moderate limitations, and there is no  
4 conflict between the moderate limitations in the opinions of Dr. Abrimi  
5 and Dr. Sunde and the RFC finding for simple, repetitive tasks. . *See e.g.*  
6 *Stubbs-Danielson*, 539 F.3d at 1174-1176.

7 ECF No. 14, pgs. 8-9.

8 Again, the Court agrees with Defendant. Here, Plaintiff contends the ALJ erred in  
9 accounting for Dr. Abrahimi's opinion that Plaintiff is moderately limited in social interactions.  
10 That argument, however, is foreclosed because the ALJ's finding that Plaintiff is limited to  
11 simple, repetitive tasks adequately accounts for such limitations. *See Thomas*, 278 F.3d at 955;  
12 *Stubbs-Danielson*, 539 F.3d 1169; *see also Rogers*, 490 F. App'x at 17-18; *Gann*, 2018 WL  
13 2441581, at \*10; *Menges*, 2018 WL 1567786, at \*8; *Messerli*, 2017 WL 3782986, at \*11; *Henry*,  
14 2016 WL 164956, at \*18; *Langford*, 2008 WL 2073951, at \*7.

#### 15 IV. CONCLUSION

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

- 19 1. Plaintiff's motion for summary judgment, ECF No. 13, is denied;
- 20 2. Defendant's motion for summary judgment, ECF No. 24, is granted;
- 21 3. The Commissioner's final decision is affirmed; and
- 22 4. The Clerk of the Court is directed to enter judgment and close this file.

23 Dated: April 7, 2021



24 DENNIS M. COTA  
25 UNITED STATES MAGISTRATE JUDGE  
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