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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MONIQUE LA VADA MCMATH,
Plaintiff,
v.
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

Case No. [17-cv-00988-MEJ](#)
**ORDER RE: CROSS-MOTIONS FOR
SUMMARY JUDGMENT**
Re: Dkt. Nos. 13, 15

INTRODUCTION

Plaintiff Monique La Vada McMath (Plaintiff) brings this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of a final decision of the Acting Commissioner of Social Security (Defendant), denying Plaintiff’s claim for disability benefits. Pending before the Court are the parties’ cross-motions for summary judgment. Pl.’s Mot., Dkt. No. 13; Def.’s Mot., Dkt. No. 15.¹ Pursuant to Civil Local Rule 16-5, the motions have been submitted on the papers without oral argument. Having carefully reviewed the parties’ positions, the Administrative Record (AR), and the relevant legal authority, the Court hereby **DENIES** Plaintiff’s motion and **GRANTS** Defendant’s cross-motion for the reasons set forth below.

BACKGROUND

Plaintiff was born on December 4, 1972. AR 91. She worked as a bilingual independent contractor facilitator, a transitional case manager, and a residential counselor before she stopped working entirely in 2013. AR 60-62.

¹ Plaintiff did not file a response to Defendant’s cross-motion. See Dkt.

1 herself because she feels unable to do things she was once unable to do. AR 76-77.

2 Before she stopped working, Plaintiff also reduced her hours at work because she would
3 forget where she was going, and she had to take some time to regroup after work before stepping
4 into her home. AR 79. Her anxiety would go up when she dealt with clients and listened to their
5 narratives. AR 80. Her employer accommodated Plaintiff in a number of ways, such as allowing
6 her to go for a walk, sit in the quiet room when speaking to clients would set off her anxiety, take
7 unscheduled breaks, and refrain from teaching a group class, as her coworkers would take over for
8 her. AR 80-81.

9 Plaintiff also attended Santa Rosa Junior College to obtain her AA degree with a focus on
10 social services. AR 81-83, 521, 524. There, she received a number of accommodations: she had a
11 tutor and a note taker, recorded the lectures, tested in a quiet room, and utilized Dragon Dictate to
12 help her type her papers. AR 81-83. Plaintiff did not testify she utilized these accommodations to
13 aid impairments caused by her post traumatic stress disorder (PTSD); rather, it appears that at least
14 some of these accommodations were necessitated by problems caused by extensive scarring to her
15 hand. *See* AR 82 (“I was able to take a recorder into the class because I’m not good at taking –
16 my hand, notetaking.”); AR 83 (regarding Plaintiff’s testimony about Dragon Dictate, Plaintiff’s
17 representative stated: “That helps me to understand your hand problems that you were having and
18 how you were able to do that.”).

19 **B. Evidence of Record**

20 1. Roberta Latefa Mineo, M.A.

21 Ms. Mineo submitted a letter to the SSA supporting Plaintiff’s disability application. AR
22 521-23. Plaintiff began attending therapy sessions with Ms. Mineo in 2010, after the Department
23 of Rehabilitation (DOR) referred Plaintiff to Ms. Mineo for twelve weeks. AR 522. After those
24 initial twelve weeks of therapy, Plaintiff continued to attend therapy with Ms. Mineo, but could
25 only do so sporadically due to lack of income. *Id.*

26 Ms. Mineo opined Plaintiff showed signs of chronic major depression throughout her
27 participation in individual and group therapy. *Id.* Plaintiff’s depression was described as “severe,
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1 but without psychotic features.” *Id.* Plaintiff felt panicked and had difficulty sleeping, shortness
2 of breath, poor appetite. *Id.* Additionally, Plaintiff frequently struggled with feelings of
3 hopelessness and, at times, experienced thoughts of suicide. *Id.* Stressors such as her children’s
4 at-risk behavior and the surfacing of Plaintiff’s childhood memories increased Plaintiff’s
5 symptoms. *Id.*

6 Ms. Mineo also opined that Plaintiff has spent the majority of her life “behind a mask” of
7 normalcy, as she is frequently detached and has experienced some episodes of dissociation. *Id.*
8 Ms. Mineo provided a history of Plaintiff’s impairments stemming from early incidents in her life.
9 AR 521. Such incidents included Plaintiff’s father shooting and killing her mother when Plaintiff
10 was one-and-a-half years old. *Id.* It is not certain whether Plaintiff witnessed the incident. *Id.*
11 Plaintiff’s father remarried a woman who was “consistently emotionally and physically abusive”
12 toward Plaintiff. *Id.* Plaintiff’s step-mother placed Plaintiff’s hands on a hot stove as punishment,
13 resulting in second and third degree burns. *Id.* Plaintiff now has scars on her hands. *Id.* Ms.
14 Mineo opined that Plaintiff’s “ability to trust and form safe attachments has been severely
15 impacted by these early incidents,” and “[e]ffects of PTSD remain with her to date.” *Id.*

16 Plaintiff was diagnosed with a learning disability in first grade. *Id.* Ms. Mineo also
17 provided a history of Plaintiff’s employment. *Id.* Plaintiff worked in a variety of human services
18 positions, including as support staff in a residential program for developmentally delayed adults, a
19 residential treatment program for emotionally disturbed deaf youth, a victim advocate for
20 YWCA’s safe house, and a one-on-one aid for children with special needs. *Id.* Plaintiff’s longest
21 duration of employment was two years. *Id.*

22 Ms. Mineo related that it had been increasingly difficult for Plaintiff to attend and remain
23 present for “other people’s disturbing stories and stressors.” AR 522. Ms. Mineo opined that (1)
24 Plaintiff’s “ability to sustain concentration is impaired to the extent that it would affect her
25 participation in a work setting” and (2) Plaintiff would have difficulty adapting to the demands of
26 a new social/work environment. AR 523. Ms. Mineo does not opine Plaintiff’s impairments
27 prevent her entirely from working.

1 3. Jay L. Danzig, Ph.D.

2 Jay Danzig is a clinical psychologist who performed a psychological evaluation of Plaintiff
3 on January 22, 2013. AR 525-532. Dr. Danzig found Plaintiff scored in the 50th percentile in
4 reading comprehension, and would need to have some subject-specific preparation to handle the
5 specialized vocabulary of any new job area; Plaintiff scored in the 5th percentile for expressive
6 vocabulary, suggesting a limited ability by which to communicate with others in an articulate or
7 descriptive manner, but she demonstrated adequate conversational capacities during the clinical
8 interview; Plaintiff's abstract verbal reasoning performance was at the 15th percentile with poor
9 accuracy, she often became confused, arrived at illogical conclusions when asked to deal with
10 complicated written materials, and would benefit most from an on-the-job training approach which
11 utilizes rote, repetition, and direct role modeling as learning modalities. AR 525-526. In contrast
12 to her poor verbal skills, Plaintiff scored in the 80th percentile with almost perfect accuracy in her
13 ability to work with detailed clerical material. AR 526 ("Her clerical speed and accuracy
14 represents a useful aptitude in terms of her moving into jobs which require her to work with entry
15 level clerical paperwork under a time pressure."). Dr. Danzig reviewed a 2002 assessment of
16 Plaintiff's performance and observed her "nonverbal spatial reasoning abilities as well as her
17 nonverbal concept reasoning potentials represent her most important problem solving strengths.
18 This represents an important constellation of strengths in terms of her moving into an entry level
19 mechanical or technical related occupation[]." AR 526-27. However, based on Plaintiff's report
20 that she suffered from bilateral carpal tunnel syndrome and a pinched nerve in her right shoulder,
21 Dr. Danzig opined the feasibility of Plaintiff pursuing competitive employment in these areas in
22 the immediate future was in question, and recommended she be evaluated by Social Security for
23 benefits. AR 527; *see also* AR 532.

24 Dr. Danzig noted Plaintiff's thought processes were easily followed and moderately
25 concrete in quality; he observed no psychotic processes. AR 528. The personality findings were
26 deemed not valid because "there is an extremely high probability that [Plaintiff] endorsed items
27 inaccurately by reporting symptoms and behaviors that are rarely seen even in hospitalized
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1 psychiatric patients.” AR 527. He observed, “It is quite possible that Ms. Mc Math believes that
2 she needs to exaggerate health and psychological issues in order to be eligible for services. . . . In
3 my opinion . . . she is selectively reporting information and as such is not forthcoming.” AR 530.

4 Dr. Danzig opined that Plaintiff’s test results “are associated with individuals whose
5 frustration tolerance for handling interpersonal demands is significantly impaired. In everyday
6 life, others will find [her] to be less than tactful, diplomatic, or empathetic Even in benign
7 work situations, she has a basic wariness of others, a wariness that can reach paranoid proportions
8 when others make even a modicum of demands upon her. These findings clearly contraindicate
9 her returning to human services or any job which requires her to work in a close interdependent
10 manner with others.” AR 532.

11 4 Gerald D. Jacobs, MFT

12 Plaintiff’s primary care physician, Jessica Cole, referred Plaintiff to Mr. Jacobs when
13 Plaintiff asked Dr. Cole “to write a letter to her employer excusing her from work due to her . . .
14 being triggered by her clients who have trauma.” AR 513. Dr. Cole referred Plaintiff to Mr.
15 Jacobs because Dr. Cole “is not treating [Plaintiff] for PTSD.” *Id.* Mr. Jacobs noted Plaintiff was
16 “mainly interested in getting a doctor to excuse her from working, though her employers have
17 given her no negative feedback about her work.” *Id.*

18 On May 9, 2013, Mr. Jacobs completed an Initial Adult Assessment of Plaintiff. AR 513-
19 20. He diagnosed Plaintiff with PTSD and disorder of written expression; he noted a number of
20 symptoms which “cause clinically significant distress and impairment in social, occupational, and
21 other important areas of functioning.” AR 517. He noted “mild” and “moderate” problems in a
22 number of categories relating to employment and mental health, but no severe problems. AR 518.
23 He opined Plaintiff had “significant strengths and relatively few obvious functional impairment,”
24 but that without treatment, Plaintiff “risk[ed] relapsing on substances, losing support system,
25 homelessness, [and] losing her children.” AR 520. He referred Plaintiff back to the DOR “where
26 they will work with her on disability or finding a less stressful work situation.” *Id.* Plaintiff did
27 not want Mr. Jacob’s services at that point in time. *Id.*

1 was active and engaged during group session but at times appeared depressed and overwhelmed.
2 AR 543, 602. On November 13, 2013, Plaintiff was quiet in group, appeared fatigued, and did not
3 exhibit impairment in cognitive function; she was easily distracted but had normal thought
4 process, appropriate perception, cooperative behavior, and appropriate but depressed and anxious
5 affect/mood. AR 541, 600. In a November 18, 2013 group session, Plaintiff was quiet and
6 appeared depressed, but during a different session on the same day, Plaintiff was “alive in group,”
7 participating and sharing her homework. AR 540, 599. Plaintiff exhibited no impairment in
8 cognitive function and exhibited normal thought process, appropriate perception, cooperative
9 behavior, and appropriate but anxious mood. *Id.* On November 20, 2013, Plaintiff engaged
10 slightly more and demonstrated marginal attention. AR 539. In addition, Plaintiff was quiet and
11 appeared anxious and depressed. *Id.*

12 During group sessions in December 2013, Plaintiff was depressed and anxious, shared
13 minimally, and was tearful. AR 583, 587. During a group session on December 4, 2013, Plaintiff
14 exhibited no impairment in cognitive function, but she had a thought process of hopelessness and
15 appeared depressed and sad. AR 587. On December 9, 2013, Plaintiff was engaged, attentive, and
16 quiet, but she was also anxious and depressed. AR 586. On December 11, 2013, Plaintiff had no
17 impairment in her cognitive function, had a normal thought process, was cooperative, was engaged
18 and attentive, but she continued to demonstrate signs of depression. AR 585. On December 20,
19 2013, Plaintiff was calm and had an even affect, her memory was intact, her judgment and insight
20 were fair, and she was less depressed. AR 590.

21 In another group session, Plaintiff was dissociative, had a thought process of hopelessness,
22 had an appropriate perception, had a cooperative behavior, and her affect/mood were depressed
23 and anxious. AR 583.

24 In July 2014 and September 2014, Plaintiff was alert and her mood and affect were
25 appropriate during a physical examination. AR 1256, 1475.

26 6. David Gross, M.D.

27 Dr. Gross is the psychological State reviewing physician who assessed Plaintiff’s
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1 application for disability benefits at the Initial level. AR 91-104. Dr. Gross considered the
2 medical and other information received and Plaintiff's age, education, training, and work
3 experience to determine how Plaintiff's conditions affected her ability to work. AR 104. He
4 determined that Plaintiff's condition should permit sustained public, simple, and complex work.
5 AR 96-97. He opined that Plaintiff's restriction of activities of daily living (ADLs) and
6 difficulties in maintaining social functioning, concentration, persistence, or pace were mild. AR
7 97. Dr. Gross noted Plaintiff attended community college part-time and counseled teens part-time.
8 AR 100. He found no evidence of cognitive issues. *Id.*

9 Dr. Gross opined Plaintiff may have some difficulties with consistent work. AR 100-01.
10 Plaintiff's Mental Residual Functional Capacity Assessment showed that Plaintiff may have some
11 difficulties with consistency due to self-reported PTSD-like symptoms, but the overall evidence
12 showed Plaintiff's willingness to attend and persist at desired goals. AR 101. Dr. Gross
13 determined Plaintiff appeared capable of adequate social interaction and appeared capable of
14 adapting. *Id.* Plaintiff demonstrated a maximum sustained work capability of light. AR 103. Dr.
15 Gross recognized that the medical evidence supported Plaintiff's allegations but not to the level of
16 total disability. *Id.* Dr. Gross acknowledged that Plaintiff may be anxious and depressed at times,
17 but the records showed that Plaintiff was able to think, communicate, and act in her own interest
18 (AR 103-04), as well as maintain pace, persistence, and concentration needed to perform work
19 over a forty-hour week (AR 104). Evidence showed that Plaintiff was able to adjust to ordinary
20 emotional stresses, get along with others, do her regular activities, care for her own daily personal
21 needs, and remember and follow simple and complex instructions. AR 104.

22 Additionally, Dr. Gross opined Plaintiff has "the ability to maintain the pace, persistence,
23 and concentration needed to perform work, with appropriate breaks, over a forty-hour week." *Id.*
24 While Plaintiff has some limitations to performing work related activities and may not be capable
25 of performing the type of work she had done in the past, she is able to do work that is less
26 demanding. *Id.* Ultimately, Dr. Gross determined that Plaintiff was not disabled. AR 103.

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1 step sequential analysis to determine whether a Social Security claimant is disabled.³ 20 C.F.R. §
2 404.1520. The sequential inquiry is terminated when “a question is answered affirmatively or
3 negatively in such a way that a decision can be made that a claimant is or is not disabled.” *Pitzer*
4 *v. Sullivan*, 908 F.2d 502, 504 (9th Cir. 1990). During the first four steps of this sequential
5 inquiry, the claimant bears the burden of proof to demonstrate disability. *Valentine v. Comm’r*
6 *Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009). At step five, the burden shifts to the
7 Commissioner “to show that the claimant can do other kinds of work.” *Id.* (quoting *Embrey v.*
8 *Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)).

9 The ALJ must first determine whether the claimant is performing “substantial gainful
10 activity,” which would mandate that the claimant be found not disabled regardless of medical
11 condition, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(i), (b). Here, the ALJ
12 determined that Plaintiff had not performed substantial gainful activity since April 1, 2012. AR
13 13.

14 At step two, the ALJ must determine, based on medical findings, whether the claimant has
15 a “severe” impairment or combination of impairments as defined by the Social Security Act. 20
16 C.F.R. § 404.1520(a)(4)(ii). If no severe impairment is found, the claimant is not disabled. 20
17 C.F.R. § 404.1520(c). Here, the ALJ determined that Plaintiff had the following severe
18 impairments: repetitive strain injury, pulmonary sarcoidosis, status post hand burns since age six,
19 depression, and PTSD. AR 13.

20 If the ALJ determines that the claimant has a severe impairment, the process proceeds to
21 the third step, where the ALJ must determine whether the claimant has an impairment or
22 combination of impairments that meet or equals an impairment listed in 20 C.F.R. Part 404, Subpt.
23 P, App. 1 (the “Listing of Impairments”). 20 C.F.R. § 404.1520(a)(4)(iii). If a claimant’s
24 impairment either meets the listed criteria for the diagnosis or is medically equivalent to the

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26 _____
27 ³ Disability is “the inability to engage in any substantial gainful activity” because of a medical
28 impairment which can result in death or “which has lasted or can be expected to last for a
continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A).

1 criteria of the diagnosis, he is conclusively presumed to be disabled, without considering age,
2 education and work experience. 20 C.F.R. § 404.1520(d). Here, the ALJ determined that Plaintiff
3 did not have an impairment or combination of impairments that meets the listings. AR 13.

4 Before proceeding to step four, the ALJ must determine the claimant's Residual Function
5 Capacity (RFC). 20 C.F.R. § 404.1520(e). RFC refers to what an individual can do in a work
6 setting, despite mental or physical limitations caused by impairments or related symptoms. 20
7 C.F.R. § 404.1545(a)(1). In assessing an individual's RFC, the ALJ must consider all of the
8 claimant's medically determinable impairments, including the medically determinable
9 impairments that are nonsevere. 20 C.F.R. § 404.1545(e). Here, the ALJ determined that Plaintiff
10 has the RFC to perform light work as defined by 20 CFR §§ 404.1567(b) and 416.967(b). AR 15.
11 Specifically, Plaintiff can lift and/or carry 10 pounds frequently, 20 pounds occasionally, sit for 6
12 hours out of an 8-hour workday, stand and/or walk for 6 hours out of an 8-hour workday, and
13 frequently handle bilaterally. AR 15-16. She must also avoid concentrated exposure to fumes,
14 odors, dusts, gases, and poor ventilation; and she is limited to simple, repetitive tasks and to
15 occasional contact with co-workers and the public. AR 16.

16 The fourth step of the evaluation process requires that the ALJ determine whether the
17 claimant's RFC is sufficient to perform past relevant work. 20 C.F.R. §§ 404.1520(a)(4)(iv);
18 404.1520(f). Past relevant work is work performed within the past 15 years that was substantial
19 gainful activity, and that lasted long enough for the claimant to learn to do it. 20 C.F.R. §
20 404.1560(b)(1). If the claimant has the RFC to do his past relevant work, the claimant is not
21 disabled. 20 C.F.R. § 404.1520(a)(4)(iv). Here, the ALJ determined that Plaintiff could not
22 perform past relevant work as a residential counselor and school adjustment counselor. AR 21.

23 In the fifth step of the analysis, the burden shifts to the Commissioner to prove that there
24 are other jobs existing in significant numbers in the national economy which the claimant can
25 perform consistent with the claimant's RFC, age, education, and work experience. 20 C.F.R. §§
26 404.1520(g); 404.1560(c). The Commissioner can meet this burden by relying on the testimony of
27 a VE or by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, Subpt. P, App. 2.

1 *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006). Here, based on the testimony of the
2 VE, Plaintiff's age, education, work experience, and RFC, the ALJ determined there are jobs that
3 exist in significant numbers in the national economy that the claimant can perform pursuant to 20
4 CFR §§ 404.1569, 404.1569(a), 416.969, and 416.969(a) such as marker, retail, housekeeping
5 cleaner, and router. AR 21-22.

6 **D. ALJ's Decision and Plaintiff's Appeal**

7 On November 13, 2015, the ALJ issued an unfavorable decision finding that Plaintiff was
8 not disabled. AR 23. This decision became final when the Appeals Council declined to review it
9 on December 23, 2015. AR 1-3. Having exhausted all administrative remedies, Plaintiff
10 commenced this action for judicial review pursuant to 42 U.S.C. § 405(g). On July 7, 2017,
11 Plaintiff filed the present Motion for Summary Judgment. On August 9, 2017, Defendant filed a
12 Cross-Motion for Summary Judgment.

13 **LEGAL STANDARD**

14 This Court has jurisdiction to review final decisions of the Commissioner pursuant to 42
15 U.S.C. § 405(g). The ALJ's decision must be affirmed if the findings are "supported by
16 substantial evidence and if the [ALJ] applied the correct legal standards." *Holohan v. Massanari*,
17 246 F.3d 1195, 1201 (9th Cir. 2001) (citation omitted). "Substantial evidence means more than a
18 scintilla but less than a preponderance" of evidence that "a reasonable person might accept as
19 adequate to support a conclusion." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002)
20 (quoting *Flaten v. Sec'y of Health & Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995)). The
21 court must consider the administrative record as a whole, weighing the evidence that both supports
22 and detracts from the ALJ's conclusion. *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989).
23 However, "where the evidence is susceptible to more than one rational interpretation," the court
24 must uphold the ALJ's decision. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989).
25 Determinations of credibility, resolution of conflicts in medical testimony, and all other
26 ambiguities are to be resolved by the ALJ. *Id.*

27 Additionally, the harmless error rule applies where substantial evidence otherwise supports

1 the ALJ’s decision. *Curry v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1990). A court may not
2 reverse an ALJ’s decision on account of an error that is harmless. *Molina v. Astrue*, 674 F.3d
3 1104, 1111 (9th Cir. 2012) (citing *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055-56
4 (9th Cir. 2006)). “[T]he burden of showing that an error is harmful normally falls upon the party
5 attacking the agency’s determination.” *Id.* (quoting *Shinseki v. Sanders*, 556 U.S. 396, 409
6 (2009)).

7 DISCUSSION

8 The parties contest one issue: whether the ALJ properly rejected Roberta Mineo’s opinion.
9 See Pl.’s Mot. at 5; see also Opp’n at 2. Plaintiff argues the ALJ’s final decision failed to
10 adequately consider the record as a whole and failed to articulate germane reasons supported by
11 substantial medical evidence for rejecting Ms. Mineo’s opinion. See Pl.’s Mot. at 6-7. Defendant
12 argues the ALJ properly rejected Ms. Mineo’s opinion, as the ALJ’s decision was supported by
13 substantial evidence, and it was free from legal error. See Opp’n at 2-8. The Court addresses the
14 sufficiency of each of the reasons articulated by the ALJ.

15 A. Standard Applicable to Evaluating Ms. Mineo’s Opinion

16 The ALJ rejected Ms. Mineo’s opinion and gave little weight to the statement, as “an
17 opinion that is not from an acceptable medical source is not entitled to be given the same weight as
18 a qualifying medical source opinion.” AR 20. Ms. Mineo is Plaintiff’s therapist but she is not a
19 medical doctor; it is undisputed that she is not considered an “acceptable medical source.” See
20 Pl.’s Mot. at 6. Ms. Mineo may not be an “acceptable medical source,” but is nevertheless an
21 “other source.” See also 20 C.F.R. §§ 404.1513(a)(3), 416.913(d); see also *Stephens v. Colvin*,
22 2014 WL 6982680, at *4 (N.D. Cal. Dec 9, 2014). “Other sources” are not entitled to the same
23 deference afforded to “acceptable medical sources.” *Molina*, 674 F.3d at 1111. The ALJ thus
24 may accord opinions from “other sources” less weight than opinions from acceptable medical
25 sources. *Stephens*, 2014 WL 6982680, at *4 (citing *Gomez v. Chater*, 74 F.3d 967, 970-71 (9th
26 Cir. 1996)).

27 However, lay witness testimony may not be disregarded without comment; to do so, an
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1 ALJ ““must give reasons that are germane to each witness.”” *Nguyen v. Chater*, 100 F.3d 1462,
2 1467 (9th Cir.1996) (quoting *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993)); *see Molina*,
3 674 F.3d at 1111; *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005) (“An ALJ need only
4 give germane reasons for discrediting the testimony of lay witnesses.”).

5 **B. Analysis**

6 The ALJ articulated the following reasons for disregarding Ms. Mineo’s testimony: she did
7 not provide an explanation for her assessment or any specific functional limitation that prevented
8 Plaintiff from working; her opinion is inconsistent with the objective findings that show mild to
9 moderate findings; and her opinion is inconsistent with the claimant’s admitted activities. AR 20.

10 1. Explanation for Assessment or Functional Limitations

11 The ALJ rejected Ms. Mineo’s opinion because Ms. Mineo did not opine Plaintiff suffers
12 from specific functional limitations that prevent her from working. AR 20. This is an accurate
13 characterization of Ms. Mineo’s opinion. *See* AR 521-23. Ms. Mineo chronicles Plaintiff’s
14 learning disability and impairments, including PTSD, the effects of which remain with Plaintiff to
15 this date. AR 521. She reports that Plaintiff has “shown signs of chronic Major Depression[,
16 which] has been severe, but without psychotic features. Anxious thoughts make sleep difficult.
17 At times she feels panicked and has shortness of breath.” AR 522. She explains Plaintiff is
18 “frequently detached and experiences some episodes of dissociation.” *Id.* But Ms. Mineo does
19 not state the frequency of Plaintiff’s impairments nor the impact of those impairments on any
20 aspect of her ability to work. In discussing Plaintiff’s prognosis, Ms. Mineo opines that Plaintiff’s
21 “ability to sustain concentration is impaired to the extent that it would affect her participation in a
22 work setting” and that she “would have difficulty to adapting to the demands of a new
23 [social/work] environment.” AR 523. Ms. Mineo does not explain whether she finds Plaintiff’s
24 ability to sustain concentration is “severely,” “moderately,” or merely “mildly” impaired—only
25 that it is “impaired to the extent it would affect her participation.” She similarly does not opine
26 about the level of difficulty Plaintiff would have in adapting to a new work environment. Ms.
27 Mineo does not opine Plaintiff’s conditions prevent her from performing any type of work.

1 Ms. Mineo’s statement is insufficiently detailed to allow the ALJ to determine whether
2 Plaintiff is disabled. “Other source” opinions such as Ms. Mineo’s “must be complete and
3 detailed enough to allow [the ALJ] to make a determination or decision about whether [a claimant]
4 is disabled.” 20 C.F.R. § 404.1513(e). Plaintiff does not argue this was not a germane reason for
5 rejecting the opinion in her Motion, nor does she respond to Defendant’s Opposition on this point.
6 *See Mot.* The undersigned finds the ALJ’s first reason for giving little weight to Ms. Mineo’s
7 letter is germane.

8 2. Inconsistency with Objective Findings

9 The ALJ also rejected Ms. Mineo’s opinion because it was inconsistent with the objective
10 findings, which showed mild to moderate impairments. AR 20. Inconsistency with medical
11 evidence is a germane reason for rejecting the opinion of a non-medical source. *Bayliss*, 427 F.3d
12 at 1218 (citing *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)).

13 The ALJ gave significant weight to the opinions of the two SSA reviewing physicians,
14 Drs. Gross and Brode. AR 19. At the initial level, Dr. Gross found the record only supported
15 mild limitations. AR 97. On reconsideration, Dr. Brode re-reviewed the claim with the benefits
16 of Dr. Danzig’s January 22, 2013 evaluation and found Plaintiff’s presentation supported mild to
17 “wnl” [within normal limits] impairments. AR 114. Dr. Brode confirmed Plaintiff had affective
18 disorders, anxiety-related disorders, and personality disorders, but found the record showed these
19 only caused mild restrictions in ADLs, mild difficulties in maintaining social functioning, and
20 moderate difficulties in maintaining concentration, persistence or pace. AR 115.

21 In addition, the ALJ reviewed Plaintiff’s psychological records from January 8, 2013
22 through December 16, 2013; the ALJ summarized multiple unremarkable mental status
23 examinations, the results of Dr. Danzig’s evaluation, and Plaintiff’s decision to forego psychiatric
24 treatment because she could not treat her mental illness with natural remedies. AR 18-19; *see also*
25 AR 20 (“In this case, the mental status examinations were mostly within normal limits; they did
26 not document claimant’s experiencing suicidal ideation, obsessional rituals, serious impairment in
27 social functioning, or conflicts with peers or coworkers. In fact, claimant lives with family,

1 engages in [ADLs], and even holds down a job and takes classes.”). The ALJ also noted that Dr.
2 Danzig’s evaluation could not be used for diagnostic purposes because, he opined, Plaintiff may
3 have endorsed testing items inaccurately because she believes she needs to exaggerate health and
4 psychological issues to receive services. AR 18.

5 Plaintiff argues the ALJ erred by discussing only the evidence that tended to support denial
6 of benefits. Pl.’s Mot. at 6. She illustrates her point by arguing that her symptoms were not
7 always within normal limits, and that she appeared depressed or anxious during certain group
8 sessions; presented as tearful during one session; and presented as easily distracted and fatigued in
9 another. *Id.* The ALJ did not find Plaintiff was free of symptoms; on the contrary, she found
10 Plaintiff suffered from PTSD and depression and experienced mild to moderate limitations in her
11 ADLs; social functioning; and concentration, persistence, or pace. AR 13-15. The ALJ did not,
12 however, find that the record supported limitations greater than the mild or moderate impairments
13 described by Drs. Gross and Brode. That Plaintiff exhibited symptoms consistent with her
14 diagnoses during group sessions does not undermine the ALJ’s conclusions, nor those of Drs.
15 Gross and Brode. The ALJ’s second reason for discounting Ms. Mineo’s opinion was germane.

16 3. Inconsistency with admitted activities

17 Finally, the ALJ discounted Ms. Mineo’s opinion because it was inconsistent with
18 Plaintiff’s admitted activities of daily living. AR 20. “The Social Security Act does not require
19 that claimants be utterly incapacitated to be eligible for benefits, and many home activities may
20 not be easily transferable to a work environment where it might be impossible to rest periodically
21 or take medication.” *See Smolen*, 80 F.3d at 1284 n.7. However, “[w]hile a claimant need not
22 vegetate in a dark room in order to be eligible for benefits, the ALJ may discredit a claimant’s
23 testimony when the claimant reports participation in everyday activities indicating capacities that
24 are transferable to a work setting.” *Molina*, 674 F.3d at 1111 (internal quotation marks and
25 citations omitted).

26 Here, the ALJ listed Plaintiff’s admittedly “somewhat normal level of daily activity and
27 interaction”: interacting with her stepchildren, living with her boyfriend and his children, going for
28

1 walks, and reading; going to class, driving, going out alone, using public transportation; shopping
2 in stores and by computer, preparing meals, doing light cleaning, doing yoga, playing light sports;
3 research writing, writing poetry, reading; going to lunch with friends; spending time with others
4 one to two times a day; and being busy working and going to school. AR 16-17; *see also* AR 14
5 (finding Plaintiff had “mild” limitations in ADLs); AR 15 (listing ADLs, including Plaintiff’s
6 work as a peer counselor, and her supervisor’s satisfaction with her performance). The ALJ did
7 not discredit Plaintiff’s testimony because she occasionally engaged in social outings or went for
8 walks; the ALJ instead noted that “the physical and mental capabilities requisite to performing
9 many of the tasks described above, as well as the social interactions, replicate those necessary for
10 obtaining and maintaining employment.” AR 17. While the undersigned may have weighed this
11 evidence differently, the ALJ’s conclusion is supported by more than a scintilla of evidence, and
12 the undersigned cannot find the ALJ erred in this assessment.⁴ *See Garrison*, 759 F.3d at 1009-10.

13 Plaintiff also argues the ALJ erred in failing to address Drs. Gross and Brode opined
14 Plaintiff may have some difficulties with consistent work. Opp’n at 7-8. The ALJ gave
15 significant weight to the opinions of Drs. Gross and Brode, and adopted their assessments of
16 Plaintiff’s limitations, including the moderate impairments Dr. Brode assessed in Plaintiff’s ability
17 to maintain sustained concentration and persistence. AR 21; *see* AR 118-19 (Dr. Brode explained
18 the “sustained concentration and persistence capacities and/or limitations” as follows: “reports
19 PTSD-[symptoms] while counseling troubled teens. [R]eports [history of] depression & anxiety &
20 [history of] abuse as a child. [M]ay have some difficulties [with] consistent work for anything
21 more than semi-skilled (3-4 step) tasks”). Consistent with Dr. Brode’s assessment, the ALJ found
22 Plaintiff experienced moderate limitations in the functional area of “concentration, persistence and
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24 ⁴ Plaintiff argues the ALJ failed to acknowledge she received accommodations while in school,
25 and sought to take a break from school and to reduce her hours at work. Pl.’s Mot. at 7. The fact
26 Plaintiff was able to work and go to school with accommodations does not establish she cannot
27 engage in work of any type. The ALJ did not find Plaintiff could perform her past relevant work
28 as a counselor, but rather that she could perform less than the full range of light work, and
included non-exertional limitations that reflected Plaintiff’s limitations in social interaction and
concentration, persistence, or pace.

1 pace” and accommodated that limitation by limiting Plaintiff to simple, repetitive tasks. AR 15.
2 The RFC the ALJ adopted limits Plaintiff to simple, repetitive tasks, and to occasional contact
3 with co-workers and the public. AR 16. Far from ignoring Dr. Brode’s findings regarding
4 Plaintiff’s difficulties with consistent work, the ALJ adopted the limitations Dr. Brode assessed in
5 full. Those limitations are also consistent with the opinions of Dr. Danzig and Mr. Jacobs, who
6 agreed Plaintiff would have difficulty performing her current work as a counselor, but did not
7 opine Plaintiff’s conditions prevented her from performing any type of work. *See* AR 520 (Mr.
8 Jacobs: DOR “will work with [Plaintiff] on disability or finding a less stressful work situation.”);
9 AR 532 (Dr. Danzig: “These findings clearly contraindicate her returning to human services or
10 any job which requires her to work in a close interdependent manner with others.”).

11 **CONCLUSION**

12 The ALJ applied the correct legal standard, and her decision was supported by substantial
13 evidence. The Court accordingly **DENIES** Plaintiff’s Motion for Summary Judgment and
14 **GRANTS** Defendant’s Cross-Motion for Summary Judgment. The Court will enter a separate
15 judgment.

16 **IT IS SO ORDERED.**

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18 Dated: November 29, 2017

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21 MARIA-ELENA JAMES
22 United States Magistrate Judge
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