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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GUADALUPE ARREOLA,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No.: 18cv0242-LAB-MDD

**REPORT AND
RECOMMENDATION ON MOTION
AND CROSS MOTION FOR
SUMMARY JUDGMENT
[ECF NOS. 12, 13]**

Plaintiff Guadalupe Arreola (“Plaintiff”) filed this action pursuant to 42 U.S.C. § 405(g) for judicial review of the final administrative decision of the Commissioner of the Social Security Administration (“Commissioner”) denying Plaintiff’s application for Disability Insurance Benefits under Title II of the Social Security Act (“Act”). (AR 18).¹

For the reasons expressed herein, the Court recommends that Defendant’s motion for summary judgment be GRANTED and Plaintiff’s motion for summary judgment be DENIED.

¹ “AR” refers to the Certified Administrative Record filed on May 29, 2018.

1 **I. BACKGROUND**

2 Plaintiff was born December 30, 1956. (AR 469). At the time the
3 instant application was filed on April 13, 2012, Plaintiff was 55-years-old
4 which categorized her as a person of advanced age. 20 C.F.R. § 404.1563,
5 416.963.

6 **A. Procedural History**

7 On April 13, 2012, Plaintiff protectively filed an application for a period
8 of disability insurance benefits under Title II of the Social Security Act,
9 alleging a disability beginning February 26, 2010. (ECF No. 12-1, p. 1). After
10 her application was denied initially and upon reconsideration, Plaintiff
11 requested an administrative hearing before an administrative law judge
12 (“ALJ”). (AR 113). An administrative hearing was held on April 2, 2014.
13 Plaintiff appeared and was represented by attorney Randilyn Nordstrom.
14 Testimony was taken from Plaintiff and Alan E. Cummings a vocational
15 expert. (*Id.*). On April 24, 2014, the ALJ issued a decision denying Plaintiff’s
16 claim for benefits. (AR 124).

17 On June 16, 2014, Plaintiff sought review with the Appeals Counsel.
18 (AR 199). On March 24, 2015, the Appeals Council granted review and
19 remanded the claim for further administrative proceedings. (AR 129-133).

20 A supplemental hearing was held on April 24, 2017. (AR 40-61).
21 Plaintiff appeared with counsel and testified at the hearing. Dr. Richard
22 Anderson, Ph.D., a medical expert, also appeared and testified. (*Id.*). The
23 ALJ denied Plaintiff’s claim in a written decision on June 29, 2017. (AR 15-
24 33). This timely civil action followed.

25 **II. DISCUSSION**

26 **A. Legal Standard**

27 Sections 405(g) and 1383(c)(3) of the Social Security Act allow

1 unsuccessful applicants to seek judicial review of a final agency decision of
2 the Commissioner. 42 U.S.C. §§ 405(g), 1383(c)(3). The scope of judicial
3 review is limited in that a denial of benefits will not be disturbed if it is
4 supported by substantial evidence and contains no legal error. *Id.*; *see also*
5 *Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1993 (9th Cir. 2004).

6 Substantial evidence means “more than a mere scintilla” but less than a
7 preponderance. *Sandqathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997). “[I]t
8 is such relevant evidence as a reasonable mind might accept as adequate to
9 support a conclusion.” *Id.* (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039
10 (9th Cir. 1995)). The court must consider the record as a whole, weighing
11 both the evidence that supports and detracts from the Commissioner’s
12 conclusions. *Desrosiers v. Sec’y of Health & Human Services*, 846 F.2d 573,
13 576 (9th Cir. 1988). If the evidence supports more than one rational
14 interpretation, the court must uphold the ALJ’s decision. *Batson*, 359 F.3d at
15 1193. When the evidence is inconclusive, “questions of credibility and
16 resolution of conflicts in the testimony are functions solely of the Secretary.”
17 *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

18 Even if a reviewing court finds that substantial evidence supports the
19 ALJ’s conclusions, the court must set aside the decision if the ALJ failed to
20 apply the proper legal standards in weighing the evidence and reaching his or
21 her decision. *Batson*, 359 F.3d at 1193. Section 405(g) permits a court to
22 enter a judgment affirming, modifying or reversing the Commissioner’s
23 decision. 42 U.S.C. § 405(g). The reviewing court may also remand the
24 matter to the Social Security Administration for further proceedings. *Id.*

25 **B. Summary of the ALJ’s Findings**

26 In rendering his decision, the ALJ followed the Commissioner’s five step
27 sequential evaluation process. *See* C.F.R. § 404.1520. At step one, the ALJ

1 found that Plaintiff had not engaged in substantial gainful activity since
2 February 26, 2010. (AR at 18).

3 At step two, the ALJ found that Plaintiff had the following severe
4 impairments: obesity, osteoarthritis in the knees bilaterally, possible bipolar
5 disorder with psychotic features versus shorter episode of psychotic disorder--
6 not otherwise specified, intellectual disability, mood disorder—not otherwise
7 specified. (*Id.*).

8 At step three, the ALJ found that Plaintiff did not have an impairment
9 or combination of impairments that met or medically equaled one of the
10 impairments listed in the Commissioner’s Listing of Impairments. (*Id.*).
11 (citing 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d),
12 404.1525 and 404.1526).

13 Next, after considering the entire record, the ALJ determined that
14 Plaintiff had the “residual functional capacity [(RFC)] to perform medium
15 work as defined in 20 C.F.R. 404.1567(c).” (AR 21). The Plaintiff “would also
16 be restricted to simple and routine tasks, in a non-public setting.” (*Id.*). The
17 ALJ said that his RFC assessment was based on all the evidence with
18 consideration of the limitations and restrictions imposed by the combined
19 effects of all the Plaintiff’s medically determined impairments. (*Id.*). The
20 ALJ also stated that he considered the opinion evidence in accordance with
21 the requirements of 20 C.F.R. 404.1527. (*Id.*).

22 The ALJ then proceeded to step four of the sequential evaluation
23 process. He found Plaintiff was unable to perform her past relevant work.
24 (AR 31). For the purposes of his step five determination, the ALJ accepted
25 the testimony of vocational expert (“VE”) Nelly Katsell. The VE determined
26 that Plaintiff could perform jobs identified by the VE that exist in significant
27 numbers in the national economy. Such as cleaner (DOT Code 381.687-0189);

1 assembler (DOT 709.684-014); or packager (DOT 920.587-018). (AR 32).

2 **C. Issue in Dispute**

3 The sole issue in dispute in this case is whether, in determining
4 Plaintiff's RFC, the ALJ properly rejected the opinion of Plaintiff's treating
5 physician, Dr. Kaiser M.D. Specifically, Plaintiff contends "the ALJ did not
6 articulate legally sufficient reasons for rejecting Dr. Kaiser's opinion that
7 [Plaintiff] would have a moderate impairment in the ability to maintain
8 attendance, work at a consistent pace, sustain an ordinary routine, and
9 respond to changes in a work setting." (ECF 12-1 at p.9).

10 Defendant argues that "the ALJ considered the moderate mental
11 limitations that Dr. Kaiser endorsed and reasonably translated those
12 limitations into concrete restrictions in Plaintiff's RFC, limiting her to
13 simple, routine tasks in a non-public setting." (ECF No. 13 at p. 15).

14 **D. Analysis**

15 **1. The Treating Physician Rule**

16 The law is well established in this circuit that a treating physician's
17 opinions are entitled to special weight because a treating physician is
18 employed to cure and has a greater opportunity to know and observe the
19 patient as an individual. *See McAllister v. Sullivan*, 888 F.2d 599, 602 (9th
20 Cir. 1989). "The treating physician's opinion is not however, necessarily
21 conclusive as to either a physical condition or the ultimate issue of disability."
22 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). The weight given a
23 treating physician's opinion depends on whether it is supported by sufficient
24 medical data and is consistent with other evidence in the record. *See*
25 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2). If the treating physician's opinion is
26 uncontroverted by another doctor, it may be rejected only for "clear and
27 convincing" reasons. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996);

1 *Baxter v. Sullivan*, 923 F.3d 1391, 1396 (9th Cir. 1991).

2 To reject the opinion of a treating physician which conflicts with that of
3 an examining physician, the ALJ must “ ‘make findings setting forth specific,
4 legitimate reasons for doing so that are based on substantial evidence in the
5 record.’ ” *Winans v. Bowen*, 853 F.2d 643, 647 (9th Cir.1987) quoting *Sprague*
6 *v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987); see also *Murray v. Heckler*, 722
7 F.2d 499, 502 (9th Cir.1983) (adopting this rule). “The ALJ can meet this
8 burden by setting out a detailed and thorough summary of the facts and
9 conflicting clinical evidence, stating his interpretation thereof, and making
10 findings.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986). The rule
11 established by *Murray* does not apply, however, “when the nontreating
12 physician relies on independent clinical findings that differ from the findings
13 of the treating physician.” *Miller v. Heckler*, 770 F.2d 845, 849 (9th Cir.1985);
14 *Allen*, 749 F.2d at 579. “[T]o the extent that [the nontreating physician's]
15 opinion rests on objective clinical tests, it must be viewed as substantial
16 evidence....’ ” *Miller*, 770 F.2d at 849 (brackets in original), quoting *Allen v.*
17 *Heckler*, 749 F.2d 577, 579 (9th Cir.1984). Where medical reports are
18 inconclusive, “ ‘questions of credibility and resolution of conflicts in the
19 testimony are functions solely of the Secretary.’ ” *Sample v. Schweiker*, 694
20 F.2d 639, 642 (9th Cir.1982) quoting *Waters v. Gardner*, 452 F.2d 855, 858 n.
21 7 (9th Cir.1971).

22 **2. Summary of Dr. Kaiser’s Medical Evidence**

23 In assessing Plaintiff’s RFC, the ALJ considered Dr. Kaiser’s Medical
24 Source Statement written in August 2015. (AR 787-793). Specifically, Dr.
25 Kaiser found Plaintiff had mild intellectual disability, resulting in a
26 somewhat simplistic thinking and a concrete thought process. Dr. Kaiser’s
27 Medical Source Statement assessed Plaintiff’s restrictions on mental work

1 related abilities as follows:

2 MODERATE RESTRICTION: Maintain attendance and
3 punctuality during a workday and workweek; Perform at a
4 consistent pace without more than regular breaks in a workday;
5 Sustain an ordinary routine without special supervision; Respond
6 appropriately to changes in routine work setting.

7 SLIGHT RESTRICTION: Interact appropriately with the public;
8 Interact appropriately with supervisor(s); Interact appropriately
9 with co-workers. (*Id.*)

10 Dr. Kaiser also opined that Plaintiff would likely be able to “handle
11 work stressors” when she is not in a manic phase. (AR 788). “[B]ut patients
12 with bipolar I generally fluctuate between depression and mania, both of
13 which would cause her problems functioning at work.” (*Id.*)

14 **3. The ALJ’s Reasons for Discounting Dr. Kaiser’s Opinion**

15 After detailing Dr. Kaiser’s opinions the ALJ noted during a medical
16 appointment on November 30, 2015, Dr. Kaiser reported Plaintiff’s mood was
17 better, her affect was euthymic, calm, not labile. (AR 797). Her thought
18 process is more organized and she reported she is feeling good. (*Id.*)

19 Similarly, the ALJ noted that Dr. Kaiser’s progress notes indicated “Plaintiff
20 was doing much better, and she had been able to go to sleep and she had not
21 been feeling like laying around all day since she had more energy.” (AR 796).

22 Dr. Kaiser’s prognosis on August 11, 2015, opined that her depression will
23 likely improve but she is prone to depression or mania for the rest of her life.
24 (AR 793). Based on this evaluation of Dr. Kaiser’s assessment and his
25 longitudinal history with Plaintiff the ALJ gave Dr. Kaiser’s opinion “some
26 weight.”

27 Including Dr. Kaiser, the record in this case includes treatment,
examinations, and reports related to Plaintiff’s mental health status
beginning in 2010 until 2017 from different medical providers. In his

1 decision, the ALJ cited to opinions from one internist, three psychologists/
2 psychiatrists that either examined and/or treated Plaintiff. The testimony
3 from the medical expert appearing at the hearing was also cited in the ALJ's
4 opinion. The ALJ considered these medical opinions and, based upon his
5 substantive analysis, accorded each opinion with either significant weight,
6 great weight, or partial weight. The Court will address each of these doctor's
7 findings and the weight given by the ALJ to their respective opinions.

8 The opinion of consultative examiner Dr. Phong Dao, D.O. was given
9 significant weight. Dr. Dao examined Plaintiff first on July 11, 2012 and
10 again on February 8, 2017. In July 2012, Plaintiff mainly complained of
11 bipolar disorder and and bilateral knee pain.² (AR 25). Plaintiff reported
12 "that she had more depressed symptoms than manic symptoms and she was
13 presently taking lithium for her bipolar disorder. (*Id.*). Plaintiff was
14 diagnosed with bipolar disorder as well as mild knee problems. In February
15 2017, Dr. Dao again examined Plaintiff and diagnosed chronic knee pain,
16 osteoarthritis, obesity, and history of bipolar disorder for many years.
17 Plaintiff also related that she experienced depression symptoms more than
18 manic symptoms. She stated she often experienced symptoms of a depressed
19 mood and had decreased interests, decreased memory, decreased
20 concentration and insomnia. (AR 908). She denied suicidal/homicidal
21 thoughts. (*Id.*). Plaintiff also reported that she was doing good, had moved to
22 a new apartment, and exercising every day. The ALJ found Dr. Dao's opinion
23 well supported by the medical evidence.

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26 ² Although Dr. Dao was completing an internal medicine evaluation, he was in a position
27 to observe Plaintiff's mental status at that point in time and he included those
observations in his report.

1 On November 19, 2010 and December 16, 2010, Dr. Giovanna Zerbi,
2 Psy.D. conducted a Neuropsychological Evaluation of Plaintiff. (AR 26). Dr.
3 Zerbi noted Plaintiff's behavior, eye contact, and speech were normal (AR
4 513). Dr. Zerbi found that Plaintiff meets the criteria for mild mental
5 retardation but noted that it has not interfered with her ability to work..."
6 (AR 516). Dr. Zerbi opined that Plaintiff "may benefit from receiving
7 vocational rehabilitation services to help her attain a job." (*Id.*). Dr. Zerbi
8 also recommended "therapy to help her deal with day to day concerns...."
9 (*Id.*). The ALJ found the opinion of Dr. Zerbi well supported by explanation
10 and by the medical evidence. (AR 27). Accordingly, the ALJ gave partial
11 weight to Dr. Zerbi's opinion.

12 Dr. C. Valette, Ph.D., a Clinical Psychologist completed a Psychological
13 Consultative Examination of Plaintiff on March 30, 2011. (AR 431). Dr.
14 Valette noted that Plaintiff's attitude and behavior were within normal
15 limits. Plaintiff's thought processes were organized and her speech was
16 generally normal. (AR 432). Dr. Valette did not observe Plaintiff to have
17 symptoms of a mood disorder. Plaintiff was a sufficient historian and was
18 able to focus on tasks without supervision of Dr. Valette. Plaintiff's results
19 on the Folstein Mental Status examination were deemed invalid due to poor
20 effort. (*Id.*). Plaintiff scores on the Bender-Gestalt II test were in the average
21 range and deemed valid by Dr. Valette. (*Id.*). The remaining tests: Trails A
22 and B; Wechsler Adult Intelligence Scale-IV; Wide Range Achievement Test-
23 IV were all deemed invalid due to poor effort. (AR 433). Dr. Valette opined
24 that Plaintiff's test results were "inconsistent with educational and work
25 history" and "inconsistent with her ability to obtain a high school diploma
26 and not attend special education classes through middle or high school." (*Id.*).
27 Ultimately, Dr. Valette found Plaintiff to be malingering and that Plaintiff

1 had no mental restrictions. (*Id.*). Despite being unable to obtain sufficient
2 test results to complete a Medical Source Statement, Dr. Valette did notate
3 that during the appointment, Plaintiff indicated that she felt her mood was
4 stable, she was exercising and going on walks. (AR 991-920). Based on the
5 number of tests conducted and written analysis, the ALJ accorded Dr.
6 Valette's opinion significant weight. (AR 28).

7 Dr. Jessica Durr, Ph.D., a Clinical Psychologist and a consultative
8 examiner, completed a Psychological Consultative Examination of Plaintiff on
9 February 21, 2017. (AR 917). Dr. Durr noted that Plaintiff was a poor
10 historian. Dr. Durr reported that Plaintiff stated she was applying for
11 disability "because of her legs" but she also complained of bipolar disorder.
12 (AR 918). Dr. Durr reported that Plaintiff stated she began having difficulty
13 in July of 2010 "but was unable to describe difficulties." (*Id.*). Also, Plaintiff
14 first stated she was not taking medications and then indicated she was
15 taking medications for depression, insomnia and for voices. (*Id.*). According
16 to Dr. Durr, Plaintiff also stated she had never seen a psychiatrist but that
17 according to Plaintiff's records she had seen one in 2011 and 2016. (*Id.*). Dr.
18 Durr also noted that the medical records she reviewed showed that Plaintiff
19 was hospitalized in 2014 "due to difficulties sleeping after apparent
20 medication changes". (*Id.*). Dr. Durr noted that the hospital records "also
21 indicated 'no history of manic or hypomanic symptoms of any kind.'" (*Id.*).

22 Dr. Durr assessed Plaintiff's current level of functions as independent
23 in activities of daily living, she manages her own money, and her typical day
24 included watching television, cooking, cleaning house and going for walks.
25 (AR 919). Dr. Durr reported that Plaintiff understood the questions asked
26 but was a poor historian and seemed to give less than optimal effort. (AR
27 920). In intellectual functioning, Dr. Durr noted that Plaintiff was testing in

1 the “extremely low range” which seemed “inconsistent with Plaintiff’s
2 reported educational and vocational history.” (*Id.*). Dr. Durr also noted that
3 her verbal comprehension Index score went from 66 (March 2011 testing) to a
4 58. Dr. Durr opined that “[t]his is a highly unlikely change.” (*Id.*).

5 Dr. Durr administered the Wechsler Adult Intelligence Scale-Fourth
6 Edition (WAIS-IV) and Trail Making Test. According to Dr. Durr, Plaintiff
7 understood the purpose of the testing and her results were lower than would
8 be expected based on educational and vocational history and lower than
9 previous testing “which was considered invalid that that time.” (AR 921). In
10 sum, Dr. Durr opined that Plaintiff’s AXIS I diagnosis was mood disorder
11 NOS, R/O Bipolar I disorder, “history of manic or hypomanic episodes are not
12 clear from history.” (*Id.*). Dr. Durr stated that “due to numerous
13 inconsistencies in her reporting and medical records along with less than
14 optimal effort, an accurate medical source statement is unable to be
15 provided.” (AR 922). Dr. Durr did recommend consistent mental health
16 treatment. (*Id.*).

17 The ALJ gave Dr. Durr’s opinion great weight. (AR 29). Specifically,
18 despite Dr. Durr’s inability to provide a medical source statement, she did
19 report that Plaintiff indicated to her that she had been exercising daily, going
20 on walks, felt her mood was stable, denied a depressed mood and denied
21 suicidal ideation or auditory/visual hallucinations. (AR 30). The ALJ opined
22 that because Dr. Durr’s report was “well supported by explanation and the
23 medical evidence” he felt justified in according her opinion great weight. (AR
24 30).

25 Dr. Richard Anderson, Ph.D. a Board Certified Psychologist and a
26 Medical Expert was the testifying expert at Plaintiff’s hearing. Dr. Anderson
27 testified that when Plaintiff was hospitalized in October 2013 she displayed

1 unusual symptoms. (AR 47). He noted that the medical record from that
2 hospitalization diagnosed her with psychotic disorder not otherwise specified.
3 He also testified that he would consider that disorder to be severe
4 impairment. (*Id.*). Dr. Anderson also opined that “there have been several
5 references to a bipolar diagnosis, which is not supported by the record.” (AR
6 48). Dr. Anderson supported his opinion by stating he found “no evidence of
7 any manic episode in the record.” (*Id.*). In addition, he noted that “[a]ll the
8 mania reports are self-reported.” (*Id.*).

9 Dr. Anderson also testified regarding Plaintiff’s work limitations. He
10 stated that he agreed with the medical source statement prepared by Dr.
11 Kaiser indicating “mild limitations with simple tasks, with interacting with
12 others in general, moderate limitations in work with detailed tasks and with
13 persistence in pace.” (AR 49). Dr. Anderson testified that the record
14 presented to him for review did not cite to any other workplace limitations.
15 (*Id.*). Dr. Anderson confirmed his opinion on cross-examination by Plaintiff’s
16 attorney:

17 **Attorney: Doctor, so is it your testimony that she does**
18 **not suffer from a bipolar disorder?**

19 **Dr. Anderson: That is correct. It’s not established in**
20 **the record at all. (AR 50).**

21 The ALJ opined that based upon Dr. Anderson’s review of the medical record,
22 his opportunity to hear Plaintiff’s testimony, and his qualifications as a
23 medical expert, his opinion was given significant weight. (AR 31).

24 In sum, the ALJ found Dr. Kaiser’s opinion was contradicted by
25 several examining physicians’ opinions which were supported by independent
26 tests and separate clinical findings. In this situation, the ALJ may resolve
27 the conflict by relying on the examining physician’s opinion. *Andrews v.*

1 *Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (“Where the opinion of the
2 claimant’s treating physician is contradicted and the opinion of a non-
3 treating source is based on independent clinical findings that differ from
4 those of the treating physician, the opinion of the non-treating source may
5 itself be substantial evidence; it is then solely the province of the ALJ to
6 resolve the conflict.”); *see also Allen v. Heckler*, 749 F2d 577,579 (9th Cir.
7 1985) (finding that to the extent the opinion of an examining physician rests
8 on objective clinical tests, the opinion may constitute substantial evidence for
9 rejecting a treating physician’s opinion.).

10 Rather than address the findings of these physicians’ reports, Plaintiff
11 cites to *Lester v. Chater*, 81 F.3d 821 (9th Cir. 1995). Specifically, Plaintiff
12 claims that “the ALJ did not articulate legally sufficient reasons for rejecting
13 Dr. Kaiser’s opinion that Arreola would have a moderate impairment in the
14 ability to maintain attendance, work at a consistent pace, sustain an ordinary
15 routine, and respond to changes in a work setting.” (ECF No. 12-1, p. 9)
16 citing *Lester*, 81 F3d at 830-31, 832.

17 Plaintiff’s citation to *Lester v. Chater* fails to support her argument that
18 the ALJ did not provide specific and legitimate reasons for not fully adopting
19 all of Dr. Kaiser’s opinion. In *Lester*, the ALJ’s decision was overruled
20 because both treating *and* examining source opinions were rejected in favor of
21 the non-treating/non-examining medical advisor’s opinion without
22 articulating either clear and convincing or specific and legitimate reasons for
23 rejecting the opinions. *Id.* at 830-833. This is not the case here. Dr. Kaiser’s
24 opinion was not completely disregarded. As noted herein, his opinion was
25 credited on the assessed limitations reported in the Medical Source
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1 Statement. (AR 787-793). The AJL gave some weight to that opinion.³ The
2 ALJ also credited Dr. Kaiser’s opinion based upon his “longitudinal history”
3 with Plaintiff.

4 Conversely, the ALJ cited to additional findings present in the record
5 that conflict with Dr. Kaiser’s assertion that Plaintiff is unable to work. For
6 example, Plaintiff reported to Dr. Kaiser on several occasions to feeling better
7 with medication. Additionally, in spite of his belief that Plaintiff is prone to
8 mood episodes and will be dealing with them the rest of her life, Dr. Kaiser
9 opined her depression will likely improve. (AR 793). Additional record
10 evidence also shows that Plaintiff regularly reported a better mood. (AR 796,
11 814, 845, 849 853). Dr. Kaiser reported that Plaintiff was doing well and not
12 experiencing manic episodes. (AR 788, 733, and 796). Further, Plaintiff
13 regularly stated that she performed a daily variety of tasks including
14 housework and going for walks. (AR 59, 69, 70). It is undisputed that
15 “where the evidence is susceptible to more than one rational interpretation,”
16 we must uphold the Commissioner’s decision.” *Sangathe v. Chater*, 108 F3d
17 978, 980 (9th Cir. 1997). These are specific and legitimate reasons based on
18 the record for the ALJ not to fully credit Dr. Kaiser’s opinion.

19 Here, the ALJ relied on laboratory test results, contrary reports from
20 examining physicians, and cited specific and legitimate reasons for not fully
21 crediting Dr. Kaiser’s opinion. *See Magallanes v. Bowen*, 881 F.2d 747, 751–
22 52 (9th Cir.1989). This demonstrates the ALJ properly considered and
23 accorded some weight to Dr. Kaiser’s opinion. The ALJ’s decision is supported

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27 ³ According to the record transcript, the ALJ sought Dr. Anderson’s opinion on Plaintiff’s
mental limitations. (AR 49). In response, Dr. Anderson testified “I agree with the medical
source statement ...in the record.” (*Id.*). The medical source statement that Dr. Anderson
referred to was Dr. Kaiser’s and was part of the medical record evidence. (AR 787-793).

1 by substantial evidence.

2 **III. CONCLUSION**

3 For the foregoing reasons, this Court RECOMMENDS that Plaintiff's
4 motion for summary judgment be DENIED, that the Defendant's cross-
5 motion for summary judgment be GRANTED, and that Judgment be entered
6 upholding the decision of the Defendant.

7 Any party having objections to the Court's proposed findings and
8 recommendations shall serve and file specific written objections on or before
9 **January 8, 2019**. See Fed. R. Civ. P. 72(b)(2). The objections should be
10 captioned "Objections to Report and Recommendation." A party may respond
11 to the other party's objections before **January 22, 2019**. See Fed. R. Civ. P.
12 72(b)(2).

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14 Dated: December 20, 2018

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16 Hon. Mitchell D. Dembin
17 United States Magistrate Judge
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