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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SABRINA FLEISCHMAN,

Plaintiff,

v.

KILOLO KIJAKAZI, Commissioner of
Social Security,

Defendant.

Case No.: 22-CV-699-WVG

**ORDER ON JOINT MOTION FOR
JUDICIAL REVIEW**

I. INTRODUCTION

This action arises from the Commissioner of Social Security Administration Kilolo Kijakazi’s (“Commissioner” or “Defendant”) denial of Sabrina Fleischman’s (“Plaintiff”) application for Supplemental Security Income (“SSI”) benefits under Title XVI of the Social Security Act (“Title XVI” or “Act”). (AR 102-105, 111-116.) Before the Court is the Parties’ December 30, 2022, Joint Motion for Judicial Review (“Joint Motion”). Pursuant to 42 U.S.C. section 405(g) (“Section 405(g)”), Plaintiff seeks judicial review of the Commissioner’s final administrative decision (“Decision”) and requests a remand for further administrative proceedings to revisit the matter of SSI benefits. (Doc. Nos. 2, 3.) The Joint Motion raises three issues, namely whether the assigned administrative law judge (“ALJ”) erred in (1) formulating the RFC; (2) evaluating Dr. Kramer’s opinion; and (3)

1 evaluating Plaintiff’s subjective statements. Having reviewed and considered the entirety
2 of the Parties’ Joint Motion as well as the accompanying administrative record, the Court
3 GRANTS IN PART and DENIES IN PART the Parties’ Joint Motion. Specifically, the
4 Court DENIES Plaintiff’s Motion for Summary Judgment, GRANTS Defendant’s Motion
5 for Summary Judgment, and explains below.

6 **II. PROCEDURAL HISTORY**

7 On May 24, 2019, Plaintiff applied for Supplemental Security Income (“SSI”)
8 benefits under Title XVI, alleging disability beginning on January 1, 2018. (AR 192-202.)
9 The Commissioner denied Plaintiff’s application initially on September 30, 2019, and upon
10 reconsideration on January 9, 2020. (AR 102-105, 111-116.) Plaintiff filed a written
11 request for a hearing before an ALJ, which the Commissioner received on March 5, 2020.
12 (AR 117.) ALJ Peter Valentino (“ALJ Valentino”) held a telephonic hearing on Plaintiff’s
13 application on November 19, 2020. (AR 44-74.) Plaintiff appeared and testified at the
14 hearing. (AR 44.) Plaintiff’s attorney, David Shore, was also present for the hearing. (*Id.*)
15 Additionally, Nicole Martinez, PsyD., an impartial medical expert (“Dr. Martinez”), and
16 Lizet Campos, an impartial vocational expert, (“VE Campos”) appeared and testified at the
17 hearing. (*Id.*) ALJ Valentino retired prior to issuing a decision; consequently, on April 16,
18 2021, a second hearing was held before ALJ Treblin. (AR 25-43.) All participants attended
19 the hearing by telephone. (AR 164; 169). Plaintiff appeared and testified by telephone. (*Id.*)
20 Plaintiff’s attorney, David Shore, also appeared telephonically. (*Id.*) Lorian Hyatt, an
21 impartial vocational expert, (“VE Hyatt”) also appeared and testified. (*Id.*) On April 23,
22 2021, ALJ Treblin issue his Notice of Decision (“Decision”) and denied Plaintiff SSI
23 benefits after finding Plaintiff was not disabled within the meaning of the Social Security
24 Act. (AR 7.)

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1 **III. FACTUAL BACKGROUND**

2 **a. Plaintiff’s Medical History**

3 Plaintiff is 30 years old and, in her Joint Motion, alleges she suffers from physical
4 and mental impairments that have left her disabled and unable to work to any extent. (AR
5 293.) Regarding her physical impairments, Dao M. Tran, a doctor of osteopathic medicine,
6 (“Dr. Tran”) found Plaintiff experiences chronic bilateral low back pain with bilateral
7 sciatica; lumbago with sciatica, right side; and subluxation complex of thoracic region.
8 (AR 382.) Plaintiff has been treated with medications that include cyclobenzaprine and
9 fluoxetine. (AR 383). On November 28, 2017, Plaintiff was treated by Jamie Cortez, a
10 chiropractor, (“Chiropractor Cortez”) for constant thoracic spine pain. (AR 392.) Plaintiff
11 reported her symptoms were relieved by rest, lying down, heat, over-the-counter
12 medication, and chiropractic adjustments. (AR 392). On January 11, 2018, Plaintiff
13 submitted to a magnetic resonance imaging (“MRI”) of her lumbar and thoracic spine,
14 which revealed “minimal right L5-S1 facet arthrosis.” (AR 379.) She also received a
15 thoracic computed tomography (“CT”) scan the same day, which demonstrated “mild
16 generalized thoracic epidural lipomatosis.” (AR 379.) Progress notes also showed relevant
17 physical examinations were mostly normal. (e.g., AR 692.) On February 10, 2020, Dr.
18 William Weismann found Plaintiff had been experiencing bilateral arm pain, hand
19 stiffness, wrist pain, neck pain, back pain, shoulder pain, swelling fingers, and intermittent
20 facial rash. (AR 682.) Plaintiff is also obese. (AR 684). On February 20, 2020, Plaintiff
21 was treated for cervical spine pain by Chiropractor Cortez, who found Plaintiff had an
22 “active painful range of motion.” (AR 679.) Chiropractor Cortez also noted crepitus and
23 “maximum tenderness: mild spinous, paraspinous, and trapezial tenderness” as well as
24 asymmetrical posture. (AR 679.) To date, Plaintiff has not been referred by a doctor for
25 chronic pain management. (AR 102.)

26 Regarding mental impairments, Plaintiff has been diagnosed by her long-time
27 treating physician, Dr. William Bennett, with major depressive disorder, generalized anxiety
28 disorder, and post-traumatic stress disorder (“PTSD”). (AR 424.) As a result of her PTSD,

1 Plaintiff contends she suffers from nightmares, startle response, vigilance, avoidance, and
2 flashbacks. (AR 521.) Plaintiff also alleges she finds it difficult to relax and experiences
3 about two panic attacks in a month. (AR 692; 713; 728; 742.) Plaintiff underwent mental
4 status examinations that were taken at the time she reported experiencing the alleged
5 mental impairments. The results of those examinations reflected Plaintiff had a depressed
6 or anxious mood while concurrently presenting with normal cognition, attention span, and
7 concentration. (AR 442-43; 466; 469; 474; 478; 482; 487; 492; 495; 499; 504; 508; 518;
8 522; 525; 531; 534; 540; 541; 545; 551; 555; 567; 571; 584; 588; 600; 604; 611; 615; 619;
9 629; 633; 698-99; 720; 728-29; 734-35; 742; 747; 755; 760; 768; 773; 423; 448; 454; 460;
10 482-83.) Medical records also reflect Plaintiff has undergone conservative treatment for
11 her mental impairments, which include supportive therapy and medication management.
12 (AR 697; 712; 727.) There is no further evidence of recommended or anticipated treatment
13 such as an aggressive treatment plan of Plaintiff's mental impairments.

14 Regarding Plaintiff's generalized anxiety disorder, she has been treated with
15 psychotherapy and medication management. (AR 299; 309; 312; 315-16; 422; 424; 432;
16 697; 712; 727; 741; 754; 767.) Plaintiff's treatment records reveal Plaintiff has not been
17 compliant with the prescribed medications for her mental impairments. (*E.g.*, AR 697; 699;
18 712; 727; 743.) Plaintiff also reported an exacerbation of symptoms postpartum during an
19 evaluation in August 2017. (AR 697; 712; 727.) Further, progress notes show Plaintiff's
20 anxiety is triggered by external factors including caring for her two children, who, Plaintiff
21 alleges, have medical problems of their own. (AR 515-16.) Notably, Plaintiff's mental
22 health examination results have shown appropriate mood and affect. (AR 335; 340-41; 347;
23 353-54; 359; 366; 371; 381; 684, 692.) Plaintiff does have a long history of major
24 depressive disorder and associated symptoms that include loss of appetite, fatigue,
25 excessive worry, and diminished interest or pleasure. (AR 684; 691; 698; 710; 713; 751;
26 764.) Plaintiff's medical records generally indicate Plaintiff is more concerned with anxiety
27 than depression. (AR 440; 462; 530.)
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1 There have been two documented emergency room visits for Plaintiff's treatment
2 related to her mental symptoms. (AR 317; 299.) On July 9, 2019, Plaintiff was treated for
3 anxiety and insomnia that was related to stress induced by a friend's then-recent suicide.
4 (AR 317-25.) Plaintiff's medical file specific to that incident indicates Plaintiff was given
5 Ativan, responded well to the medication, and generally showed good improvement. (AR
6 318.) Plaintiff had no suicidal ideation and no signs of acute panic attack, acute psychosis,
7 or severe anxiety. (AR 318.) On August 13, 2019, Plaintiff was treated for mild and
8 intermittent palpitations associated with anxiety. (AR 299-308.) She was briefly treated
9 and discharged. (AR 299-308.) The record shows Plaintiff's mental impairments were
10 medically manageable, and does not show evidence of any recommended or anticipated
11 treatment such as an aggressive treatment plan. Plaintiff has not had any inpatient
12 psychiatric hospital treatment for exacerbation of her mental symptoms. Plaintiff's
13 examination records also show appropriate mood and affect. (AR 335; 340-41; 347; 353-
14 54; 359; 366; 371; 377; 381; 389; 412.)

15 Notwithstanding her mental impairments, Plaintiff testified at the April 16, 2021,
16 telephonic hearing before ALJ Treblin that she has been able to care for her children and
17 pets, perform basic cleaning, do laundry, and prepare meals. (AR 52-53; 228-29; 237-38;
18 441; 517.) Plaintiff also testified she has been able to drive by herself and take her children
19 to their medical appointments. (AR 51; 515-16.) Plaintiff has not engaged in substantial
20 gainful activity since May 24, 2019, and prior to her alleged disabling condition, was
21 employed as a bakery worker, courtesy clerk, café associate, and seasonal helper. (AR 12;
22 245-51.)

23 **b. Dr. Kramer's Opinion**

24 On September 9, 2019, Sheldon Kramer, Ph.D., ("Dr. Kramer") performed a
25 consultative examination with Plaintiff, who was referred to Dr. Kramer for PTSD and
26 anxiety. (AR 415-17.) Dr. Kramer's mental status evaluation revealed Plaintiff's thought
27 process appeared to be intact and her impulse control, insight, and judgment appeared to
28 be good. (AR 416.) Further, Plaintiff was cooperative and calm, and she appeared well-

1 groomed and appropriate. (*Id.*) Dr. Kramer also reported there was no indication of any
2 thought disorder and or psychotic process. (*Id.*) Dr. Kramer did note “it does not appear
3 that the patient is on any psychiatric medications,” despite documentation Plaintiff was “on
4 Lexapro 5 mg” and off and on other psychiatric medications. (*Id.*) Plaintiff was given the
5 Saint Louis University Mental Status (“SLUMS”) examination to assess Plaintiff’s
6 cognitive performance and propensity for dementia. (*Id.*) Dr. Kramer scored Plaintiff
7 between 20 or 21 of 30, constituting a borderline result of between mild and major
8 cognitive impairment. (*Id.*) In his medical source statement, Dr. Kramer opined Plaintiff
9 would have difficulty sustaining an eight-hour work day because of mood instability;
10 difficulty interacting with others because of preoccupation with her anxiety and being
11 hyper alert to both peers and authority figures; and difficulty tracking tasks because of her
12 inability to concentrate and debilitating anxiety at a severe level. (*Id.*)

13 **c. Plaintiff’s Other Health Assessments**

14 Plaintiff was evaluated by other physicians, psychiatrists, and vocational experts for
15 her physical and mental ailments dating to the relevant period, namely Dr. Nicole Martinez;
16 Dr. Mark Berkowitz; Dr. Elizabeth Covey; and Vocational Expert Lizet Campos (“VE
17 Campos”). On November 19, 2020, Dr. Martinez, a psychiatrist, opined Plaintiff had the
18 following limitations: moderate limitations interacting with others, occasional public
19 contact, occasional contact with workers, and no tandem work tasks with coworkers. (AR
20 62-63.) Dr. Martinez also testified Plaintiff’s profile did not fit Dr. Kamer’s SLUMS score
21 of 20 to 21, which would be consistent with someone who has dementia. (AR 60-61.) Dr.
22 Martinez elaborated that most of Plaintiff’s mental status examinations from treating
23 doctors were within normal limits. (AR 60-61.) On April 16, 2021, vocational expert
24 Lorian Hyatt (“VE Hyatt”) opined that a hypothetical individual with the limitations set
25 forth by Dr. Martinez would be able to work as a cleaner, merchandise marker, and mail
26 sorter. (AR 40.) State agency consultant Dr. Covey found Plaintiff was not disabled and
27 was capable of short, simple instructions with social limitations. (AR 83-84.) Another state
28 agency consultant, Dr. Berkowitz, determined Plaintiff was not disabled, and he noted that

1 Dr. Kramer’s “opinion contrasts with the other evidence in the record.” (AR 97-100.) Dr.
2 Berkowitz also found Plaintiff appeared “capable of understanding and remembering more
3 than short and simple instructions.” (AR 95.)

4 **d. ALJ Treblin’s April 23, 2021, Decision**

5 As noted, Plaintiff and VE Hyatt appeared at a telephonic hearing on Plaintiff’s
6 disability benefits application. (AR 10.) David Shore appeared as counsel on Plaintiff’s
7 behalf. (*Id.*) ALJ Treblin examined whether Plaintiff was disabled under section
8 1614(a)(3)(A) of the Social Security Act (“Act”). (AR 20.) Based on the application for
9 supplemental security Plaintiff filed on May 24, 2019, ALJ Treblin concluded Plaintiff was
10 not disabled within the meaning of the Act and issued his Decision accordingly. (*Id.*) In
11 doing so, ALJ Treblin made ten findings of fact as follows:

12 **(1) Plaintiff had not engaged in substantial gainful activity since May 24, 2019,**
13 **Plaintiff’s amended alleged onset date** (citing 20 CFR 416.971, *et seq.*);

14 **(2) Plaintiff had the following severe impairments: major depressive disorder;**
15 **generalized anxiety disorder; and PTSD. These impairments significantly limited**
16 **Plaintiff’s ability to perform basic work activities as required by Social Security**
17 **Regulations (“SSR”) 85-28.** Concurrently, ALJ Treblin noted Plaintiff had a host of non-
18 severe physical impairments, specifically upper back pain, low back pain with sciatica,
19 obesity, stiffness and pain in her hands, and tension in her neck. ALJ Treblin added
20 Plaintiff’s physical examinations were mostly normal, and Plaintiff had been treated
21 conservatively as a result of her complaints about pain and related medications. Despite
22 Plaintiff’s complaints, ALJ Treblin noted Plaintiff had not alleged disability on a physical
23 basis (citing 20 CFR 416.920(c));

24 **(3) Plaintiff did not have an impairment or combination of impairments that**
25 **met or medically equaled the severity of one of the listed impairments in 20 CFR Part**
26 **404, Subpart P, Appendix 1** (citing 20 CFR 416.920(d), 416.925 and 416.926). ALJ
27 Treblin elaborated Plaintiff’s mental impairments failed to meet or medically equal the
28 criteria of listings 12.04, 12.06, and 12.15. Specifically, Plaintiff’s mental impairments did

1 not cause at least two “marked” limitations or one “extreme” limitation that are needed to
2 satisfy the “paragraph B” criteria;

3 **(4) Plaintiff had the residual functional capacity (“RFC”) to perform a full**
4 **range of work at all exertional levels but with the following non-exertional limitations:**
5 **Plaintiff was limited to understanding, remembering, and carrying out unskilled job**
6 **instructions and tasks; interacting appropriately with co-workers and supervisors,**
7 **but not collaborating or working as part of a team; engaging in occasional, brief**
8 **contact with the public; appropriately responding to routine work situations and**
9 **settings; responding appropriately to changes in routine work settings and situations;**
10 **and appropriately asking questions and using her judgment.** ALJ Treblin “considered
11 all symptoms and the extent to which these symptoms can reasonably be accepted as
12 consistent with the objective medical evidence and other evidence, based on the
13 requirements of 20 CFR 416.929 and SSR 16-3p,” and he “also considered the medical
14 opinion(s) and prior administrative medical finding(s) in accordance with the requirements
15 of 20 CFR 416.920(c);”

16 **(5) Plaintiff was unable to perform any of her past relevant work.** To support his
17 conclusion, ALJ Treblin cited to VE Hyatt’s testimony that Plaintiff’s RFC precluded
18 Plaintiff from performing any of her past relevant work (citing 20 CFR 416.965);

19 **(6) Plaintiff was 25 years old at the time of the Decision’s issuance, which**
20 **qualified Plaintiff as a younger individual age 18-49, based on the date she filed her**
21 **application for SSI benefits (20 CFR 416.963);**

22 **(7) Plaintiff at least a high school education (20 CFR 416.964);**

23 **(8) Plaintiff had no transferable job skills to other work within her residual**
24 **functional capacity (“RFC”) (citing SSR 82-41 and 20 CFR Part 404, Subpart P,**
25 **Appendix 2);**

26 **(9) Considering Plaintiff’s age, education, work experience, and RFC, there**
27 **existed jobs in significant numbers in the national economy that Plaintiff could**
28 **perform (citing 20 CFR 416.969 and 416.969(a)).** ALJ Treblin accepted VE Hyatt’s

1 testimony that Plaintiff’s limitations permitted her to work as a cleaner, merchandise
2 marker, and mail sorter. (AR 71-72.) In doing so, ALJ Treblin noted VE Hyatt’s testimony
3 was consistent with the Dictionary of Occupational Titles (“DOT”). (AR 19); and, finally,

4 (10) **Plaintiff had not been under a disability, as defined in the Social Security**
5 **Act, since May 24, 2019, the date Plaintiff’s application for SSI benefits was filed** (20
6 CFR 416.920(g)). (See AR 12-19.)

7 **IV. LEGAL STANDARD**

8 Title 42 U.S.C. section 405(g) (“Section 405(g)”) provides for judicial review of the
9 Social Security Administration’s disability determinations: “The court shall have the power
10 to enter . . . a judgement affirming, modifying, or reversing the decision of the
11 Commissioner of Social Security, with or without remanding the cause for a rehearing.”
12 42 U.S.C. § 405(g). A reviewing court will reverse the ALJ’s decision only if “it is based
13 upon legal error or is not supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d
14 1211, 1214 (9th Cir. 2005). “Substantial evidence is such relevant evidence as a reasonable
15 mind might accept as adequate to support a conclusion” and is “more than a mere scintilla
16 but less than a preponderance.” *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005); *see*
17 *also Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007).

18 In review of the agency’s finding, a reviewing court considers the evidence in its
19 entirety, weighing both the evidence that supports and detracts from the ALJ’s conclusion.
20 *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). “The ALJ is responsible for
21 determining credibility, resolving conflicts in medical testimony, and for resolving
22 ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). “If the record would
23 support more than one rational interpretation, we defer to the ALJ’s decision.” *Bayliss*, 427
24 F.3d at 1215.

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1 **V. DISCUSSION**

2 **a. ALJ Treblin’s Formulation of the RFC**

3 Plaintiff argues ALJ Treblin erred in formulating her RFC by conflating simple tasks
4 with unskilled work and thus rendering the RFC ambiguous. At all times, the ALJ is
5 responsible for assessing a claimant's RFC “based on all of the relevant medical and other
6 evidence.” 20 C.F.R. §§ 404.1545(a)(3), 404.1546(c). In doing so, the ALJ may consider
7 any statements provided by medical sources, including statements that are not based on
8 formal medical examinations. *See* 20 C.F.R. §§ 404.1513(a), 404.1545(a)(3). However,
9 once at the hearing level, the ALJ is not bound by state agency findings, and the RFC
10 becomes an issue reserved for the ALJ’s resolution. 20 C.F.R. § 416.946. An ALJ's
11 determination of a claimant's RFC must be affirmed “if the ALJ applied the proper legal
12 standard and his decision is supported by substantial evidence.” *Bayliss*, 427 F.3d at 1211.

13 Here, the Court finds ALJ Treblin’s RFC assessment is supported by substantial
14 evidence. ALJ Treblin set forth his determination of Plaintiff’s RFC after reviewing the
15 entirety of Plaintiff’s administrative record, inclusive of all medical opinions and prior
16 administrative findings consistent with the requirements of 20 CFR 416.920(c). To that
17 end, ALJ Treblin based the RFC on objective medical evidence pursuant to 20 CFR
18 416.929 and SSR 16-3p. (AR 16.) Plaintiff’s comprehensive medical record reveals largely
19 unremarkable mental status examinations and a conservative, rather than aggressive,
20 history of mental health treatment. (AR 17.) ALJ Treblin relied heavily upon these records
21 in his Decision, inclusive of the fact that Plaintiff was not placed on any aggressive mental
22 health treatment plan and Plaintiff’s own testimony indicating Plaintiff did not require
23 aggressive medical intervention for her mental impairments. (*Id.*; see also AR 697; 712;
24 727). In particular, Plaintiff’s longstanding treatment with Dr. Bennett produced records of
25 her mental status examinations taken at the time she reportedly experienced mental
26 impairments, where the results of such examinations were vastly normal. Specifically,
27 those treatment records revealed Plaintiff showed a depressed or anxious mood, displayed
28 normal cognition, attention span, and concentration, and did not require escalated medical

1 intervention. (AR 442-43; 466; 469; 474; 478; 482; 487; 492; 495; 499; 504; 508; 518;
2 522; 525; 531; 534; 540; 541; 545; 551; 555; 567; 571; 584; 588; 600; 604; 611; 615; 619;
3 629; 633; 698-99; 720; 728-29; 734-35; 742; 747; 755; 760; 768; 773; 423; 448; 454; 460;
4 482-83.) Consistent with those records, Plaintiff’s remaining medical file shows Plaintiff’s
5 mental impairments were managed effectively, and her objective examination records
6 demonstrate appropriate mood, affect, and no exacerbation of her mental impairments. (AR
7 335; 340-41; 347; 353-54; 359; 366; 371; 377; 381; 389; 412.)

8 To that end, ALJ Treblin appropriately found Dr. Martinez’s testimony highly
9 persuasive. (*Id.*) Dr. Martinez opined “the claimant has the capacity for unskilled jobs with
10 only occasional public contact and occasional co-employee contact.” (*Id.*) Even so, ALJ
11 Treblin’s RFC reflected limitations that were more restrictive than those set forth in Dr.
12 Martinez’s opinion. Specifically, ALJ Treblin limited Plaintiff to working where she had
13 no collaborative or teamwork contact with coworkers, a limitation that is more restrictive
14 than Dr. Martinez’s recommendation that Plaintiff have occasional contact with coworkers.
15 The Court strains to find prejudicial error here and indeed finds none. The circumstance
16 only inures to Plaintiff’s benefit because ALJ Treblin found Plaintiff more restricted than
17 Dr. Martinez, whose opinion ALJ Treblin appropriately found credible and in line with the
18 objective evidence.

19 Notably, too, ALJ Treblin also found persuasive the assessments by state agency
20 mental health consultants Dr. Elizabeth Covey and Dr. Mark Berkowitz. (AR 17.) In
21 particular, Dr. Berkowitz found Plaintiff “capable of understanding and remembering more
22 than short [and] simple instructions.” (AR 95.) Consistent with Dr. Berkowitz’s
23 assessment, ALJ Treblin found the “assessment of claimant being only capable of simple
24 repetitive tasks is not fully persuasive or supported by longitudinal functioning, objective
25 signs and/or daily functioning in file evidence.” (AR 97.) While Plaintiff argues ALJ
26 Treblin created ambiguity in his assessment, the Court disagrees. ALJ Treblin found
27 Plaintiff could perform unskilled job instructions and tasks, which the Court finds is
28 supported by the objective medical record. (AR 14.) Moreover, even if ALJ Treblin

1 conflated simple tasks with unskilled work, the circumstance is not one that would unravel
2 ALJ Treblin’s RFC determination. This is because substantial evidence underlies ALJ
3 Treblin’s Decision, which considered the entirety of Plaintiff’s medical file and found that
4 the objective records and most medical opinions supported a finding of non-disability, as
5 explained above.

6 Separately, Plaintiff relies upon *Brandie A.* to argue ALJ Treblin’s Decision is
7 flawed for its incorporation of the vocational expert’s opinion into the RFC. In *Brandie A.*,
8 the Court held the ALJ committed more than harmless error after finding meritorious
9 plaintiff’s argument that the remaining job of addresser was “obsolete and fail[ed] to rise
10 to the level of significant jobs.” *Brandie K. A. v. Saul* at *4 (C.D. Cal. May 21, 2020). The
11 Court noted the DOT and vocational information showed the addresser position had an
12 aggregate number of 44,000 national jobs. *Id.* In so holding, the Court found there was no
13 substantial evidence to support the ALJ’s determination that the addresser position
14 continued to exist in significant numbers. *Id.* at *5. Here, Plaintiff argues “the job of mail
15 sorter has a reasoning of level 3, indicating that the tasks involved are not simple” and thus
16 ALJ Treblin erred in adopting the vocational expert’s opinion that Plaintiff could perform
17 such a job. (Doc. No. 13 at 7). Even in accepting Plaintiff’s position as true, ALJ Treblin
18 adopted the remainder of the vocational expert’s opinion that Plaintiff could separately
19 perform two other jobs, namely as a cleaner and/or as a merchandise marker. (*Id.*) Taken
20 together, these two occupations exist in 375,000 national job openings, with 175,000 jobs
21 available for the cleaner position and 200,000 jobs available for the merchandise marker
22 position. (AR 19.) The Court finds these two positions, taken either independently or
23 together, undermine Plaintiff’s position that she is not able to work in any position available
24 in significant numbers in the national economy in light of ALJ Treblin’s RFC assessment.
25 Equally important, Plaintiff never disputed the evidence to support ALJ Treblin’s
26 determination that these positions continued to exist in significant numbers in the national
27 economy. Accordingly, the Court finds no relief for Plaintiff’s argument that ALJ Treblin’s
28 RFC analysis is fatally flawed for its inclusion of VE Hyatt’s opinion.

1 Finally, Plaintiff argues ALJ Treblin’s RFC formulation improperly omitted
2 consideration of Plaintiff’s physical limitations. While ALJ Treblin’s omission of a
3 determination on physical disability is apparent, the Court finds the omission was
4 appropriate under the circumstances. As a foundational matter, Plaintiff did not file an
5 application for SSI benefits on the basis of any physical impairments. (AR 13; see also AR
6 219.) Plaintiff’s own adult function report is consistent with her application insofar as the
7 report does not contain any representations from Plaintiff that she is disabled on the basis
8 of any physical impairment. (AR 241.) Despite Plaintiff’s failure to seek SSI benefits on
9 account of a physically disabling condition, ALJ Treblin still reviewed Plaintiff’s medical
10 records specific to her physical examinations and, in doing so, noted that the records
11 showed Plaintiff presented as mostly normal. (AR 13 [citing AR 692].) Further, the same
12 records indicated Plaintiff had not been referred for further care of any physical conditions,
13 was not advised to limit her physical activity to any extent, and had conservative treatment
14 plans that included medication consisting of ibuprofen and a muscle relaxant. (AR 13.)

15 At all times, Plaintiff bears the burden of putting forth sufficient evidence to
16 substantiate the existence of a disabling condition. *Mitchell v. Berryhill*, 2019 WL 366252,
17 at *9 (S.D. Cal. Jan. 30, 2019), report and recommendation adopted, 2019 WL 857644
18 (S.D. Cal. Feb. 21, 2019) (noting “the burden is on the plaintiff/ claimant to establish a
19 disability,” finding the ALJ “properly considered all evidence in the record in coming to
20 the conclusion that plaintiff [wa]s not disabled,” and noting “plaintiff’s medical record
21 had significant gaps as noted by the ALJ throughout the decision, some of which call[ed]
22 into question [plaintiff’s] credibility.”); see generally *Pimental v. Saul*, 2020 WL 673649,
23 at *1 (S.D. Cal. Feb. 11, 2020), report and recommendation adopted sub. Nom. Paul P. v.
24 Saul, 2020 WL 1062947 (S.D. Cal. Mar. 5, 2020) (stating a claimant “bears the burden of
25 proving that he or she ‘either was permanently disabled or subject to a condition which
26 became so severe as to create a disability prior to the date upon which his or her disability
27 insured status expired.’”) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir. 1995.).
28 Here, Plaintiff did not allege a physically disabling condition in her application for SSI

1 benefits before ALJ Treblin. Accordingly, the Court finds for this separate reason that ALJ
2 Treblin’s RFC assessment is free from error as to any unalleged physically disabling
3 condition.

4 **b. ALJ Treblin’s Evaluation of Dr. Kramer’s Opinion**

5 With respect to claims that are filed on or after March 27, 2017, “the former
6 hierarchy of medical opinions . . . no longer applies.” *Woods v. Kijakazi*, 32 F.4th 785, 787
7 (9th Cir. 2022). Under the revised regulations, a court must consider the following five
8 factors when evaluating the persuasiveness of medical opinions: (1) supportability; (2)
9 consistency; (3) relationship with the claimant; (4) specialization; and (5) “other” factors.
10 20 C.F.R. § 416.920c(c)(1)-(5). The most important factors the Commissioner considers
11 when evaluating the persuasiveness of medical opinions are “supportability” and
12 “consistency.” 20 C.F.R. § 416.920c(a). “Supportability means the extent to which a
13 medical source supports the medical opinion by explaining the ‘relevant ... objective
14 medical evidence.’” *Woods*, 32 F.4th at 791. “Consistency means the extent to which a
15 medical opinion is ‘consistent ... with the evidence from other medical sources and
16 nonmedical sources in the claim.’” *Id.* at 792.

17 The Court first addresses the supportability of ALJ Treblin’s assessment of Dr.
18 Kramer’s opinion. In *Woods*, the ALJ found a doctor’s “opinion unpersuasive because it
19 was inconsistent with the overall treating notes and mental status exams in the record.”
20 *Woods*, 32 F.4th at 793. The Court held the ALJ’s inconsistency finding was supported by
21 substantial evidence. *Id.* In doing so, the Court cited conflicting opinions that showed
22 normal cognition and memory as well as the claimant’s ability to take on “additional duties
23 of caring for . . . a [child] and dealing with her [80-year-old] mother’s medical issues.” *Id.*
24 Here, the Court finds substantial evidence underlies ALJ Treblin’s assessment of Dr.
25 Kramer’s opinion and is thus supported by the objective record. Indeed, a survey of the
26 record shows Dr. Kramer’s opinion was not supported by his own records of his mental
27 examination of Plaintiff. (AR 17.) ALJ Treblin emphasized that Dr. Kramer’s
28 determination of a SLUMS score between 20 and 21 directly conflicted with Dr. Kramer’s

1 own examination narrative. (*Id.*) Dr. Kramer’s mental status evaluation notes indicated
2 Plaintiff was cooperative and calm, made good eye contact, and showed no indication of
3 any thought disorder or psychotic process. (AR 416). Dr. Kramer’s notes also reflect
4 Plaintiff’s thought process appeared to be intact, that her concentration seemed to be fair,
5 and her impulse control, insight, and judgement appeared to be good. (*Id.*) Further, as noted
6 by Dr. Martinez, Dr. Kramer’s SLUMS score as to Plaintiff would be consistent with an
7 individual who has dementia, a condition that the objective record and Dr. Kramer’s own
8 notes do not support to any extent. (AR 60-61.) In light of the inconsistency between Dr.
9 Kramer’s own notes and his finding of disability, the Court opines ALJ Treblin’s exercise
10 of his decision to discount Dr. Kramer’s opinion as inconsistent is reasonable and
11 supported by substantial evidence.

12 The Court now turns to the matter of consistency between ALJ Treblin’s assessment
13 of Dr. Kramer’s opinion and the objective record. In *Woods*, the ALJ found a doctor’s
14 “opinion unpersuasive because it was inconsistent with the overall treating notes and
15 mental status exams in the record.” *Woods*, 32 F.4th at 793. The Court held the ALJ’s
16 inconsistency finding was supported by substantial evidence. *Id.* In doing so, the Court
17 cited conflicting opinions that showed normal cognition and memory as well as the
18 claimant’s ability to take on “additional duties of caring for . . . a [child] and dealing with
19 her [80-year-old] mother’s medical issues.” Like the ALJ in *Woods*, ALJ Treblin here
20 pointed to Plaintiff’s mental status examinations showing normal cognition as well as
21 Plaintiff’s own testimony revealing her ability to take care of her two children who face
22 many medical problems – evidence that directly conflicted with Dr. Kramer’s opinion. (AR
23 13; 14.) Regarding consistency of Dr. Kramer’s opinion, ALJ Treblin provided evidence
24 from medical sources and non-medical sources that are inconsistent with Dr. Kramer’s
25 opinion. This evidence includes mental status evaluations that show normal cognition, no
26 memory deficits, and normal attention span and cognition. (AR 17.) The evidence also
27 includes ALJ Treblin’s consideration of Plaintiff’s own testimony regarding her ability to
28 carry out daily activities. (*Id.*) These activities include taking care of her two young

1 children while her husband is away at a full-time job, basic cleaning, from mopping and
2 vacuuming to washing dishes, handling laundry, preparing meals, taking care of pets,
3 getting around on her own by driving a car, and going to doctor appointments. (*Id.*)

4 Despite that her own testimony failed to support Dr. Kramer’s opinion, Plaintiff
5 claims ALJ Treblin failed to develop the record and thus erred by rejecting Dr. Kramer’s
6 opinion without obtaining the raw data for his SLUMS test score. The Court finds this
7 argument unpersuasive. The ALJ in a social security case has an independent “duty to fully
8 and fairly develop the record and to assure that the claimant's interests are considered.”
9 *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). However, the “ALJ’s duty to
10 develop the record further is triggered only when there is ambiguous evidence or when the
11 record is inadequate to allow for proper evaluation of the evidence.” *Ford v. Saul*, 950
12 F.3d 1141, 1156 (9th Cir. 2020) (quoting *Mayes v. Massanari*, 276 F.3d 453, 459–60 (9th
13 Cir. 2001)). This includes when “the ALJ find[s] that the record is inadequate to allow for
14 proper evaluation of the evidence.” *Tonapetyan*, 242 F.3d at 1150. In *Ford*, the ALJ
15 rejected a medical expert’s opinion in part because she failed to provide useful statements
16 regarding the degree of claimant’s limitations. *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir.
17 2020). The Court held the ALJ did not have to contact the expert again to further develop
18 the record because the ALJ had years of claimant’s mental health records and multiple
19 opinions from non-examining psychiatrists to inform her ultimate decision. *Id.* In contrast,
20 the *Tonapetyan* Court noted that part of the reason the ALJ failed to fully develop the
21 record was because he relied heavily on testimony by a medical expert who showed
22 concern over whether the record was complete enough for the ALJ to reach a conclusion
23 and for him to assess the claimant’s mental impairment. *Tonapetyan*, 242 F.3d at 1151.

24 Here, the Court finds ALJ Treblin did not have a duty to develop the record further
25 because there was no evidentiary ambiguity to resolve. ALJ Treblin only partially relied
26 on Dr. Martinez’s opinion as a basis for rejecting Dr. Kramer’s opinion. To that end, despite
27 Plaintiff’s citations to both *Ford* and *Tonapetyan*, neither case bolsters Plaintiff’s attempt
28 to undermine ALJ Treblin’s assessment of Dr. Kramer’s opinion. Like the ALJ in *Ford*,

1 ALJ Treblin cited to years of Plaintiff’s mental health records that showed normal
2 cognition, no memory deficits, and normal attention span and concentration. (AR 17.)
3 Unlike *Tonapetyan*, Dr. Martinez’s testimony did not reflect any concern over an inability
4 to assess and evaluate Plaintiff’s impairments. In fact, Dr. Martinez testified that her
5 opinion was based off Dr. Kramer’s own narrative as well as her review of the entire
6 medical records from Plaintiff’s treating doctors. (AR 59-60.) For this reason, ALJ Treblin
7 had a robust administrative record before him that was largely consistent across medical
8 opinions and Plaintiff’s own testimony. That Dr. Kramer’s opinion conflicted with those
9 opinions, his own notes, and Plaintiff’s own testimony does not give rise to ambiguity in
10 the record that required ALJ Treblin’s investigation. The circumstance only compelled ALJ
11 Treblin to exercise his inherent discretion to consider Dr. Kramer’s opinion and assess Dr.
12 Kramer’s credibility accordingly. For this reason, the Court finds the ALJ’s duty to develop
13 the record was not triggered, and ALJ Treblin’s credibility assessment of Dr. Kramer’s
14 opinion is both supported and consisted with the objective medical record. In turn, the
15 Court finds substantial evidence underlies ALJ Treblin’s assessment of Dr. Kramer’s
16 opinion for the reasons stated above.

17 **c. ALJ’s Evaluation of Plaintiff’s Subjective Testimony**

18 Lastly, Plaintiff argues ALJ Treblin erred in evaluating her subjective symptom
19 statements. As a threshold matter, an individual’s “statements about . . . pain or other
20 symptoms will not alone establish that [they] are disabled.” 20 C.F.R. § 416.929. “There
21 must be objective medical evidence . . . that shows [they] have a medical impairment(s)
22 which could reasonably be expected to produce the pain or other symptoms alleged.” 20
23 C.F.R. § 416.929. In deciding to reject a claimant’s testimony about the severity of
24 symptoms, the ALJ must provide “specific, clear, and convincing reasons for doing so.”
25 *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (citing *Lingenfelter v. Astrue*
26 ,504 F.3d 1028, 1036 (9th Cir.2007)). An ALJ is not “required to believe every allegation
27 of disabling pain” or other non-exertional impairment. *Orn v. Astrue*, 495 F.3d 625, 635
28 (9th Cir. 2007). However, a finding that a claimant’s testimony is not credible “must be

1 sufficiently specific to allow a reviewing court to conclude the adjudicator . . . did not
2 arbitrarily discredit a claimant's testimony.” *Brown-Hunter v. Colvin*, 806 F.3d 487, 493
3 (9th Cir. 2015) (citation omitted). Ultimately, the “clear and convincing” standard requires
4 an ALJ to show his work. *Id.* In light of the relevant standard, “it is not the court's role to
5 ‘second-guess’ an ALJ's reasonable interpretation of a claimant's testimony.” *Id.* at 500
6 (citing *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).).

7 Here, the Court finds ALJ Treblin provided clear and convincing reasons for
8 rejecting Plaintiff’s self-serving testimony. Plaintiff’s argument regarding her daily
9 activities is not persuasive. In *Orn*, the ALJ rejected plaintiff’s testimony because his
10 activities of “read[ing], watch[ing] television and color[ing] in coloring books” “indicate
11 that he is more functional than alleged.” *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007).
12 Here, the ALJ pointed to specific and extensive daily activities Plaintiff was fully capable
13 of doing and that she admitted to undertaking on a consistent basis. ALJ Treblin
14 specifically noted Plaintiff testified that she was capable of cleaning, which included
15 mopping, vacuuming, and washing dishes, handling laundry, preparing meals, taking care
16 of pets, getting around by driving a car to shop, and attending doctor appointments. (AR
17 16 [citing AR 228-29, 237-38, 441.].) “Despite [her] claims of pain, if a claimant is able to
18 perform household chores and other activities that involve many of the same physical tasks
19 as a particular type of job, it would not be farfetched for an ALJ to conclude that the
20 claimant's pain does not prevent the claimant from working.” *Fair v. Bowen*, 885 F.2d 597,
21 603 (9th Cir. 1989). Such is the case here. Plaintiff’s testimony about her own abilities,
22 coupled with the objective medical record substantiating the same, reasonably supports
23 ALJ Treblin’s finding on Plaintiff’s credibility. Indeed, “contradiction with the medical
24 record is a sufficient basis for rejecting the claimant's subjective testimony.” *Smartt v.*
25 *Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (citation omitted). For such reason, the Court

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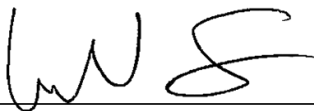
1 finds ALJ Treblin did not err in partially discounting Plaintiff's testimony for lack of
2 credibility.

3 **VI. CONCLUSION**

4 Given the foregoing, the Court GRANTS IN PART and DENIES IN PART the
5 Parties' Joint Motion for Judicial Review. Plaintiff's Motion for Summary Judgment is
6 DENIED and Defendant's Motion for Summary Judgment is GRANTED. Accordingly,
7 the Court DIRECTS the Clerk of this Court to enter judgment in Defendant's favor and
8 close this case accordingly.

9 **IT IS SO ORDERED.**

10 Dated: September 19, 2023

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13 Hon. William V. Gallo
14 United States Magistrate Judge
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