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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Aug 07, 2019

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

KIBRA B.,<sup>1</sup>  
Plaintiff,  
  
vs.  
  
ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>2</sup>  
Defendant.

No. 1:18-cv-03111-MKD  
  
ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT  
  
ECF Nos. 15, 17

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 15, 17. The parties consented to proceed before a magistrate judge. ECF No.

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<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned identifies them only by their first names and the initial of their last names.

<sup>2</sup> Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. *See* Fed. R. Civ. P. 25(d).

1 7. The Court, having reviewed the administrative record and the parties' briefing,  
2 is fully informed. For the reasons discussed below, the Court denies Plaintiff's  
3 motion, ECF No. 15, and grants Defendant's motion, ECF No. 17.

#### 4 **JURISDICTION**

5 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);  
6 1383(c)(3).

#### 7 **STANDARD OF REVIEW**

8 A district court's review of a final decision of the Commissioner of Social  
9 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
10 limited; the Commissioner's decision will be disturbed "only if it is not supported  
11 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
12 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a  
13 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159  
14 (quotation and citation omitted). Stated differently, substantial evidence equates to  
15 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and  
16 citation omitted). In determining whether the standard has been satisfied, a  
17 reviewing court must consider the entire record as a whole rather than searching  
18 for supporting evidence in isolation. *Id.*

19 In reviewing a denial of benefits, a district court may not substitute its  
20 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,

1 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one  
2 rational interpretation, [the court] must uphold the ALJ’s findings if they are  
3 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674  
4 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an  
5 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless  
6 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”  
7 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s  
8 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
9 *Sanders*, 556 U.S. 396, 409-10 (2009).

#### 10 **FIVE-STEP EVALUATION PROCESS**

11 A claimant must satisfy two conditions to be considered “disabled” within  
12 the meaning of the Social Security Act. First, the claimant must be “unable to  
13 engage in any substantial gainful activity by reason of any medically determinable  
14 physical or mental impairment which can be expected to result in death or which  
15 has lasted or can be expected to last for a continuous period of not less than twelve  
16 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s  
17 impairment must be “of such severity that he is not only unable to do his previous  
18 work[,] but cannot, considering his age, education, and work experience, engage in  
19 any other kind of substantial gainful work which exists in the national economy.”  
20 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to  
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner  
4 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),  
5 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis  
9 proceeds to step two. At this step, the Commissioner considers the severity of the  
10 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
11 claimant suffers from “any impairment or combination of impairments which  
12 significantly limits [her] physical or mental ability to do basic work activities,” the  
13 analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the  
14 claimant’s impairment does not satisfy this severity threshold, however, the  
15 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
16 404.1520(c), 416.920(c).

17 At step three, the Commissioner compares the claimant’s impairment to  
18 severe impairments recognized by the Commissioner to be so severe as to preclude  
19 a person from engaging in substantial gainful activity. 20 C.F.R. §§  
20 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more

1 severe than one of the enumerated impairments, the Commissioner must find the  
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the  
4 severity of the enumerated impairments, the Commissioner must pause to assess  
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
6 defined generally as the claimant's ability to perform physical and mental work  
7 activities on a sustained basis despite her limitations, 20 C.F.R. §§ 404.1545(a)(1),  
8 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

9 At step four, the Commissioner considers whether, in view of the claimant's  
10 RFC, the claimant is capable of performing work that she has performed in the past  
11 (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the  
12 claimant is capable of performing past relevant work, the Commissioner must find  
13 that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the  
14 claimant is incapable of performing such work, the analysis proceeds to step five.

15 At step five, the Commissioner considers whether, in view of the claimant's  
16 RFC, the claimant is capable of performing other work in the national economy.  
17 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,  
18 the Commissioner must also consider vocational factors such as the claimant's age,  
19 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
20 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
2 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other  
3 work, analysis concludes with a finding that the claimant is disabled and is  
4 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

5 The claimant bears the burden of proof at steps one through four above.  
6 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
7 step five, the burden shifts to the Commissioner to establish that 1) the claimant is  
8 capable of performing other work; and 2) such work “exists in significant numbers  
9 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*  
10 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 11 **ALJ’S FINDINGS**

12 On September 10, 2014, Plaintiff applied both for Title II disability  
13 insurance benefits and Title XVI supplemental security income benefits alleging a  
14 disability onset date of September 9, 2014. Tr. 182-96. The applications were  
15 denied initially, Tr. 117-20, and on reconsideration, Tr. 123-35. Plaintiff appeared  
16 before an administrative law judge (ALJ) on February 28, 2017. Tr. 38-69. On  
17 March 31, 2017, the ALJ denied Plaintiff’s claim. Tr. 14-33.

18 At step one of the sequential evaluation process, the ALJ found Plaintiff has  
19 not engaged in substantial gainful activity since the alleged disability onset date.  
20 Tr. 19. At step two, the ALJ found that Plaintiff has the following severe

1 impairments: carpal tunnel syndrome, ulnar neuropathy, and complex regional  
2 pain syndrome. Tr. 19.

3 At step three, the ALJ found Plaintiff does not have an impairment or  
4 combination of impairments that meets or medically equals the severity of a listed  
5 impairment. Tr. 23. The ALJ then concluded that Plaintiff has the RFC to perform  
6 light work with the following limitations:

7 [Plaintiff] can lift and/or carry twenty pounds occasionally and ten  
8 pounds frequently, and can stand and/or walk, and sit, for about six  
9 hours in an eight-hour day with normal breaks. [Plaintiff] can push  
10 and/or pull, including the operation of foot controls, without  
11 limitation except for the lift and carry limitations. She can  
frequently climb, stoop, kneel, crouch, and crawl, and can  
occasionally reach, handle, and finger with her right upper  
extremities. [Plaintiff] must avoid concentrated exposure to  
extremes of heat and vibrations.

12 Tr. 23.

13 At step four, the ALJ found Plaintiff is capable of performing past relevant  
14 work as a Substance Abuse Counselor. Tr. 27. Therefore, the ALJ concluded  
15 Plaintiff was not under a disability, as defined in the Social Security Act, from the  
16 alleged onset date of September 9, 2014, though the date of the decision. Tr. 28.

17 On April 26, 2018, the Appeals Council denied review of the ALJ's  
18 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for  
19 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying  
3 her disability insurance benefits under Title II and supplemental security income  
4 benefits under Title XVI of the Social Security Act. Plaintiff raises the following  
5 issues for review:

- 6 1. Whether the ALJ adhered to SSR 03-02p;
- 7 2. Whether the ALJ properly identified Plaintiff’s severe impairments at  
8 step two;
- 9 3. Whether the ALJ conducted a proper step-three analysis;
- 10 4. Whether the ALJ properly evaluated Plaintiff’s symptom claims; and
- 11 5. Whether the ALJ properly evaluated the medical opinion evidence.

12 ECF No. 15 at 1, 5.

13 **DISCUSSION**

14 **A. SSR 03-02p**

15 Plaintiff argues the ALJ failed to recognize that the complex regional pain  
16 syndrome (CRPS) evaluation was governed by Social Security Ruling (SSR) 03-  
17 02p. ECF No. 15 at 11-12. SSR 03-02p recognizes that the most common acute  
18 clinical manifestations of CRPS are intense pain and findings of autonomic  
19 dysfunction at the site of the precipitating trauma and spontaneously occurring pain  
20 associated with abnormalities in the affected region involving the skin,



1 subcutaneous tissue, and bone. CRPS claims are “adjudicated using the sequential  
2 evaluation process, just as for any other impairment” and so “[i]f the adjudicator  
3 finds that pain or other symptoms cause a limitation or restriction having more than  
4 a minimal effect on an individual’s ability to perform basic work activities, a  
5 “severe” impairment must be found to exist.” SSR 03-02p. Here, while the ALJ  
6 did not cite to SSR 03-02p, the ALJ followed the sequential process and made a  
7 finding that Plaintiff’s statements about the severity of her reported symptoms as to  
8 her 1) left upper extremity and mental impairments were not substantiated by the  
9 objective medical evidence and did not cause a limitation or restriction having  
10 more than a minimal effect on Plaintiff’s ability to perform basic work activity and  
11 2) right upper extremity were sufficiently addressed by an occasional manipulative  
12 restriction and light work. Tr. 20-22, 25. This approach was consistent with SSR  
13 03-02p. As discussed *infra*, the ALJ’s findings were rational and supported by  
14 substantial evidence.

### 15 **B. Step Two: Severe Impairments**

16 Plaintiff contends the ALJ erred at step two by failing to identify her  
17 bilateral hand impairments—not just her right hand—and mental impairments as  
18 severe impairments. ECF No. 15 at 4-11.

19 At step two of the sequential process, the ALJ must determine whether the  
20 claimant suffers from a “severe” impairment, i.e., one that significantly limits her

1 physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1520(c),  
2 416.920(c). To show a severe impairment, the claimant must first prove the  
3 existence of a physical or mental impairment by providing medical evidence  
4 consisting of signs, symptoms, and laboratory findings. 20 C.F.R. §§ 416.921,  
5 404.1521. The claimant’s own statement of symptoms alone will not suffice. *Id.*

6 The ALJ then considers whether the medically determinable impairment is  
7 severe or not severe. This is a de minimis standard. *Smolen v. Chater*, 80 F.3d  
8 1273, 1290 (9th Cir. 1996). A medically determinable impairment is not severe if  
9 the “medical evidence establishes only a slight abnormality or a combination of  
10 slight abnormalities which would have no more than a minimal effect on an  
11 individual’s ability to work,” SSR 85-28 at \*3, including basic work activities,  
12 such as lifting, pushing, pulling, reaching, carrying, handling, understanding,  
13 carrying out and remembering simple instructions, dealing with changes in a  
14 routine work setting, and responding appropriately to supervision, coworkers, and  
15 usual work situations, 20 C.F.R. §§ 416.921, 404.15210.

16 *1. Left Hand Impairment*

17 Plaintiff argues the ALJ erred by not considering that she had severe  
18 impairments in both hands—not just her right hand. ECF No. 15 at 4-11. To  
19 succeed, Plaintiff must establish there was medical evidence proving that Plaintiff  
20 suffers from bilateral upper extremity impairments that significantly limit her

1 ability to do basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). Here,  
2 under the step-two analysis, the ALJ did not discuss whether Plaintiff's conditions  
3 in her left upper extremity were severe. However, in other portions of the ALJ's  
4 decision, the ALJ found: 1) Plaintiff "does not meet the listing under 1.02 as she  
5 does not have bilateral impairments in each of her upper extremities that prevent  
6 her from effectively performing fine and gross motor manipulations," Tr. 23, and  
7 2) Plaintiff's "mild pain in her left" is "accounted for with the above limitations,"  
8 Tr. 26. Because the ALJ found that Plaintiff's left upper extremity conditions were  
9 mild (and not significantly limiting), the ALJ inherently found that Plaintiff's left  
10 upper extremity conditions were not severe. This finding is supported by  
11 substantial evidence. Although Plaintiff was occasionally observed with left hand  
12 decreased strength and other symptoms and was diagnosed with carpal tunnel  
13 syndrome, ulnar neuropathy, Cubital Tunnel Syndrome, and complex regional pain  
14 syndrome on her left hand, she had surgery to address these conditions on August  
15 26, 2015, within one year of the alleged disability onset date. Tr. 870-71, 928,  
16 1085-88. Following this surgery and subsequent physical therapy, there are  
17 minimal medical findings to support Plaintiff's reports of continued disabling pain  
18 and limitations for her left upper extremity. *See* Tr. 897-98, 902-03, 944-53, 990-  
19 1011, 1047-68 (void of negative objective observations relating to her left upper  
20 extremity); Tr. 900 (Oct. 2015: "Incision site from ulnar surgery well healed"); Tr.

1 939-40, 968 (Jan. 2016: “Scar medial aspect of left arm at the elbow. Sensitivity to  
2 light touch.”); Tr. 911 (July 2016: “Does have some neuropathic diffuse pain in  
3 upper extremities”); Tr. 971 (Nov. 2016: some weakness in right upper extremity  
4 but no tremors; resting comfortably). Tr. 1076-80 (Dec. 2016: exam of upper  
5 extremities did not “show any concerning swelling or limited range of motion,”  
6 although it was “[c]learly painful” for Plaintiff, who had been off her pain  
7 medication for a month, “to move the fingers and the wrist” and thus Dr. Mongrain  
8 ordered x-rays and labs, which are not of record); Tr. 1073 (Dec. 2016: “No bone,  
9 joint, tendon, or muscle abnormalities. Digit and Nails: medial edge of nails are  
10 ingrown with TTP bilaterally . . . normal mood and full affect”). Moreover, while  
11 Plaintiff continued to receive treatment from Waters Edge Pain Clinic for her  
12 reported upper extremity pain, the treatment notes are largely devoid of consistent  
13 objective findings or observations indicating significantly weakened left grip or  
14 strength or reduced range of motion. Tr. 792-833. In addition, the medical  
15 opinion jointly signed by Dr. Chad Mongrain and Jackie Earl, OT/L, which listed  
16 bilateral upper extremity pain, weakness, and decreased grip strength pre-dated  
17 Plaintiff’s August 2015 surgery on her left upper extremity and was rationally  
18 discounted as discussed *infra*. Tr. 492-95. On this record, the ALJ did not error by  
19 not listing a left upper extremity condition as a severe impairment.  
20  
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1 Even if the ALJ should have determined that Plaintiff's left upper extremity  
2 condition was a severe impairment, any error would be harmless because the ALJ  
3 resolved step two in Plaintiff's favor, proceeded with the five-step analysis, and  
4 crafted an RFC based on all of Plaintiff's supported symptoms. Tr. 24; *see Stout v.*  
5 *Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *Burch v.*  
6 *Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005). While the RFC did not include  
7 bilateral manipulative limitations, it did include bilateral lifting and carrying  
8 limitations and an occasional-manipulative limitation for the right upper extremity.  
9 Tr. 23. Plaintiff failed to establish consequential error.

## 10 2. *Mental Impairment*

11 Plaintiff argues the ALJ erred by not considering that she had a severe  
12 mental impairment caused by the pain, depression, and anxiety she endures due to  
13 her upper extremity conditions. ECF No. 15 at 6-11. To succeed, Plaintiff must  
14 establish there was medical evidence proving that Plaintiff suffers from a  
15 psychological impairment significantly limiting her ability to do basic work  
16 activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). Here, the ALJ found that  
17 Plaintiff's conditions did not cause more than a minimal limitation on Plaintiff's  
18 ability to perform basic mental work activities. Tr. 20.

19 An as initial matter, the ALJ found that the medical evidence indicated  
20 Plaintiff dealt with several significant situational stressors over the relevant period,

1 including divorce, situations with her children, the death of her mother, a vehicle  
2 breakdown, and being sued. Tr. 20. Temporary severe limitations are not enough  
3 to meet the durational requirement for a finding of disability. 20 C.F.R. §§  
4 404.1509, 416.909 (requiring a claimant's impairment to be expected to last for a  
5 continuous period of not less than twelve months); 42 U.S.C. § 423(d)(1)(A)  
6 (same); *see Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1165 (9th  
7 Cir. 2008) (affirming the ALJ's finding that treating physicians' short-term excuse  
8 from work was not indicative of "claimant's long-term functioning"). Here, the  
9 ALJ's finding that Plaintiff's mental health conditions caused only minimal  
10 impairment, which was heightened at times due to significant situational stressors,  
11 is a rational finding supported by substantial evidence. While Plaintiff's mental  
12 health waxed and waned, the record reflects that the moderate (or significant)  
13 limitations were the result of situational stressors. While Plaintiff is correct that  
14 her mental functioning at home and in the community are not assumed to transfer  
15 to a work setting "where the demands and stressors differ from those at home," 20  
16 C.F.R. Pt. 404, Subpt. P, App. 1 (Listings) § 12.00(3)(c), the ALJ rationally  
17 determined that Plaintiff's mental conditions would minimally affect her basic  
18 work activities and therefore did not constitute a severe disorder.

19       Next, the ALJ found that Plaintiff's treatment notes regularly described  
20 normal psychiatric observations and normal performance on mental status

1 examinations, which were inconsistent with Plaintiff's reports of severely limiting  
2 mental health symptoms. Tr. 20-21. When assessing a claimant's degree of  
3 functional limitation, the ALJ considers all relevant and available clinical signs and  
4 laboratory findings, the effects of symptoms, and how functioning may be affected,  
5 such as by chronic mental disorders, structured settings, medication, and other  
6 treatment. 20 C.F.R. §§ 404.1520a(c), 416.920a(c). Here, Plaintiff contends the  
7 ALJ erred by concluding that the objective findings in Plaintiff's treatment records  
8 were normal by either 1) relying on records that predated the alleged onset date; 2)  
9 were notes from physical, rather than mental health treatment, records; or 3) were  
10 cherry-picked mental health records. ECF No. 15 at 9. A full review of the record  
11 supports the ALJ's finding that Plaintiff was generally observed and found with  
12 normal mental status and performance. Plaintiff mistakenly concluded that an  
13 October 11, 2014 treatment note, Tr. 346, predated the alleged onset date of  
14 September 9, 2014. ECF No. 15 at 9 (contending that Tr. 346 predated the alleged  
15 onset date). In fact, the treatment note cited, Tr. 346-47, is from October 11, 2014  
16 (after the September 9, 2014 alleged onset date), related to an appointment for  
17 Plaintiff's reported pain in both arms, and states, "[i]nsight and judgment appear  
18 both to be intact and appropriate. Mood and affect are described as normal and full  
19 affect." Tr. 346. In addition, a medical note from September 5, 2014, a mere four  
20 days before Plaintiff's alleged disability onset date, is related to a ketamine

1 infusion treatment for her right upper extremity pain and repeatedly noted that  
2 Plaintiff was using her laptop with “[m]ood euthymic, denies thoughts of self-  
3 harm. Affect congruent. Speech normal rate, tone, volume. Interactive, good eye  
4 contact. Makes good eye contact. Remote and short-term memory intact.” Tr.  
5 370. Moreover, the ALJ appropriately considered observations and findings from  
6 appointments for physical treatments as Plaintiff’s pain resulting from her physical  
7 symptoms is at the core of Plaintiff’s psychological impairment. Tr. 56-57, 331-  
8 34. The ALJ’s finding that Plaintiff’s treatment notes regularly described  
9 generally normal psychiatric observations and normal performance on mental  
10 status examinations is rational and supported by substantial evidence.

11 Finally, the ALJ determined the medical opinion evidence reflected that  
12 Plaintiff’s psychological impairment was not significantly limiting. For instance,  
13 in June 2016, Plaintiff’s treating therapist, Mary Day, opined that Plaintiff’s basic  
14 work abilities were either not significantly limited or mildly limited, but that  
15 Plaintiff would miss one day of work per month. Tr. 422-24. The ALJ rationally  
16 discounted Ms. Day’s attendance opinion as unexplained and unsupported as the  
17 treatment notes reflect mild waxing and waning, other than stress related to the  
18 death of Plaintiff’s mother in August 2016 and other serious situational stressors.  
19 Tr. 21; *see Connett v. Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003) (recognizing  
20 that a medical opinion may be rejected if it is unsupported by the provider’s



1 treatment notes); *see, e.g.*, Tr. 662 (May 6, 2016: “mood ‘so much better,’ affect  
2 congruent with range and humor, insightful and working proactively to maintain  
3 stability”); Tr. 660 (May 13, 2016: “mood ‘better, much more manageable,’ affect  
4 congruent with some range, concerned about insight regarding marijuana and  
5 alcohol use and impact on functioning and treatment”); Tr. 658 (June 3, 2016:  
6 “mood ‘tired but calmer,’ affect congruent with some range and humor, insight  
7 about problems and needs”); Tr. 656 (June 10, 2016: “mood ‘calm,’ affect  
8 congruent, reflective, describes some insight about need for further reprocessing  
9 and current responses in relationships, patterns of behavior”); Tr. 654 (June 17,  
10 2016: “mood ‘good,’ affect congruent with some range, able to tolerate distress  
11 related to current stressors and identify helpful strategies and choices”); Tr. 652  
12 (July 1, 2016: “mood ‘stressed,’ affect congruent with some range, has insight  
13 about recovery needs but actively using marijuana and occasional alcohol use,  
14 judgment regarding this is limited but acknowledges need to examine this/remain  
15 abstinent”); Tr. 650 (July 8, 2016: “mood ‘proud, little confused,’ affect congruent,  
16 has insight about relational patterns and needs/beliefs driving them, using skills  
17 effectively out of session”); Tr. 648 (July 15, 2016: “mood ‘OK, better,’ affect  
18 congruent with range and humor, insightful and making significant efforts in skill  
19 use and mindfulness out of session”); Tr. 647 (Aug. 8, 2016: noting that Plaintiff’s  
20 mother passed away; feeling “anger, grief”); Tr. 645 (Aug. 12, 2016: using

1 marijuana and drinking alcohol daily to cope; afraid to allow grief; feeling alone;  
2 “mood ‘grieving,’ affect congruent and tearful, has some insight about needs and  
3 willing to consider abstinence from alcohol”); Tr. 643 (Aug. 23, 2016: not doing  
4 well, struggling with drinking and smoking pot a lot in order to deal with the grief  
5 of her mother’s death); Tr. 639 (Aug. 25, 2016: talked about grief process and  
6 strategies for distress tolerance; mood was sad; affect congruent but able to  
7 endorse resource and supports and agrees to increase use of adaptive coping); Tr.  
8 637 (Sept. 1, 2016: “mood “much better,” affect congruent, managing episodes of  
9 distress using skills effectively; appropriate to continue trauma process with  
10 stability”); Tr. 635 (Sept. 20, 2016: reporting “pretty messed up, having massive  
11 depression” and agrees to contact [primary care provider] about insurance issue for  
12 approval of ketamine injection for pain in arms and back; mood is depressed,  
13 speech is somewhat slow, content vague, disorganized); Tr. 633 (Oct. 17, 2016:  
14 attending daily activities including activities of daily living, going to church and  
15 AA meetings, feels “better, less depressed” and able to recall memories of mother  
16 without intense grief); Tr. 631 (Oct. 20, 2016: “mood ‘much better,’ expresses  
17 ‘happiness, enjoyment of life again,’ significant decrease in anhedonia, fatigue,  
18 depressed mood” and reporting joining a new church, attending women’s groups  
19 and activities at least three times a week, and daily productive activity); Tr. 630  
20 (Oct. 27, 2016: missed session to attend funeral of extended family member and

1 reported she was “doing fine”); Tr. 628 (Oct. 28, 2016: since abstaining from  
2 marijuana her pain increased to level 5, reporting a ketamine injection scheduled to  
3 address pain; reporting daily positive social contacts, performing activities of daily  
4 living, using cognitive and behavioral skills daily to manage depression; discussing  
5 grieving of relative’s death); Tr. 627 (Dec. 5, 2016: Plaintiff called to tell Ms. Day  
6 that she had been at inpatient drug treatment program for past few weeks and that  
7 she left inpatient without completing the program because without medication her  
8 pain was intolerable); Tr. 625 (Dec. 9, 2016: “mood ‘pretty good,’ affect  
9 congruent, insightful about needs and problems and motivated to continue  
10 [treatment]”). The one medical record indicating that Plaintiff missed a counseling  
11 session due to pain was in April 2015 before Plaintiff’s surgery on her left upper  
12 extremity. ECF No. 15 at 3 (citing Tr. 751). This summary of the therapy notes  
13 reflects that Plaintiff understandably had a difficult time grieving her mother’s  
14 death, but that Plaintiff’s mental health conditions were a non-severe impairment.  
15 On this record, the ALJ reasonably discounted Ms. Day’s unexplained “check box”  
16 opinion that Plaintiff would miss one day or more a month as there was no  
17 indication in the treatment notes that Plaintiff was unable to attend therapy—or  
18 work—because of her mental-health impairments.

19 Plaintiff also contends the ALJ erred in finding that her mental health  
20 conditions were a severe impairment by erroneously rejecting Sue Gunn, M.S.’s

1 and Rebekah Cline, Psy.D.'s short-duration opinions. ECF No. 15 at 11. In  
2 November 2014, Ms. Gunn opined that Plaintiff's mental-health impairments were  
3 not permanent but would last six months and that Plaintiff's mental health could be  
4 treated with individual cognitive behavioral skills therapy and medication  
5 management and that her depression was in part related to her chronic pain. Tr.  
6 482-84. In May 2015, Dr. Cline found that Plaintiff was "mentally capable of  
7 working, but her physical condition is preventing her from doing many things she  
8 used to do, though final disposition of her physical condition is deferred to the  
9 appropriate provider. Continuation of mental health therapy is advised and  
10 ongoing medication management, but participating in these activities does not  
11 preclude working in some capacity." Tr. 571. Dr. Cline indicated that Plaintiff  
12 would be impaired for three-to-six months. Tr. 571. On this record, the ALJ  
13 appropriately discounted these short-durational opinions, as the ALJ deemed  
14 Plaintiff's left upper extremity condition, for which surgery was conducted in  
15 August 2015, as only causing mild pain and other symptoms and the ALJ  
16 adequately addressed the right upper extremity limitations with an occasional  
17 manipulative restriction and also included a bilateral lifting and carrying limitation.  
18 Therefore, with this RFC, the ALJ appropriately found that any pain resulting from  
19 the upper extremities would not cause a severe mental-health impairment.  
20 Moreover, Plaintiff's argument that the ALJ erred by discounting these short-

1 duration opinions while giving significant weight to Dr. Kwon's light-work  
2 opinion that did not identify a duration for Plaintiff's limitation to light work is  
3 without merit because it is immaterial whether Dr. Kwon identified a durational  
4 end to the opined light work limitation (with an additional restriction for repetitive  
5 activity for the right upper extremity), as the ALJ crafted an RFC consistent with  
6 Dr. Kwon's opinion, which the ALJ found consistent with the objective medical  
7 evidence. Tr. 26, 489 (Dr. Kwon also opined that Plaintiff's impairments would  
8 improve if she had access to other treatments.).

9 On this record, the ALJ appropriately considered that Plaintiff only had mild  
10 limitations in each four broad mental functional areas and that her mental  
11 impairments were not severe. Tr. 22-23. In addition, based on the ALJ's rational  
12 interpretation of the objective and opinion evidence, the ALJ appropriately did not  
13 discuss whether Plaintiff's mental health impairments qualified under Paragraph C  
14 criteria. Listings § 12.00(G)(1).

### 15 **C. Step Three: Listing**

16 Plaintiff argues the ALJ failed to consider that Plaintiff meets Listing 1.02  
17 because there is bilateral impairment in each of Plaintiff's upper extremities'  
18 performance of fine and gross motor manipulations. ECF No. 15 at 5-6. Because  
19 the ALJ reasonably determined that Plaintiff's left-upper extremity conditions did  
20

1 not significantly limit Plaintiff’s manipulation as discussed *supra*, the ALJ did not  
2 error at step three.

### 3 **D. Plaintiff’s Symptom Claims**

4 Plaintiff contends the ALJ failed to rely on clear and convincing reasons in  
5 discrediting her statements about the intensity, persistence, and other limiting  
6 effects of her symptoms. ECF No. 15 at 12-17.

7 An ALJ engages in a two-step analysis to determine whether to discount a  
8 claimant’s testimony regarding subjective symptoms. SSR 16–3p, 2016 WL  
9 1119029, at \*2. “First, the ALJ must determine whether there is objective medical  
10 evidence of an underlying impairment which could reasonably be expected to  
11 produce the pain or other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation  
12 marks omitted). “The claimant is not required to show that her impairment could  
13 reasonably be expected to cause the severity of the symptom she has alleged; she  
14 need only show that it could reasonably have caused some degree of the  
15 symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

16 Second, “[i]f the claimant meets the first test and there is no evidence of  
17 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
18 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
19 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
20 omitted). General findings are insufficient. The ALJ must identify what symptom

1 claims are being discounted and what evidence undermines these claims. *Id.*  
2 (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)). “The clear and  
3 convincing [evidence] standard is the most demanding required in Social Security  
4 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*  
5 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

6 Factors to be considered in evaluating the intensity, persistence, and limiting  
7 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,  
8 duration, frequency, and intensity of pain or other symptoms; 3) factors that  
9 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and  
10 side effects of any medication the claimant takes or taken to alleviate pain or other  
11 symptoms; 5) treatment, other than medication, the claimant receives or received  
12 for relief of pain or other symptoms; 6) any measures other than treatment the  
13 claimant uses or used to relieve pain or other symptoms; and 7) any other factors  
14 concerning the claimant’s functional limitations and restrictions due to pain or  
15 other symptoms. SSR 16-3p; 20 C.F.R. § 416.929(c)(1)-(3). The ALJ is instructed  
16 to “consider all of the evidence in an individual’s record” “to determine how  
17 symptoms limit ability to perform work-related activities.” SSR 16-3p.

18 While the ALJ determined that Plaintiff’s medically determinable  
19 impairments could reasonably be expected to cause some of the alleged symptoms,

1 the ALJ discounted Plaintiff's claims concerning the intensity, persistence, and  
2 limiting effects of the symptoms. Tr. 20, 24.

3 *1. Inconsistent with the Medical Evidence*

4 The ALJ discounted Plaintiff's physical and psychiatric symptoms because  
5 they were inconsistent with the medical observations and findings. Tr. 24-26. An  
6 ALJ may not discredit a claimant's symptom testimony and deny benefits solely  
7 because the degree of the symptoms alleged is not supported by objective medical  
8 evidence. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v.*  
9 *Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601  
10 (9th Cir. 1989). However, the objective medical evidence is a relevant factor,  
11 along with the medical findings and observations, in determining the severity of a  
12 claimant's symptoms and their disabling effects. *Rollins*, 261 F.3d at 857; 20  
13 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2). Here, the ALJ found that Plaintiff's  
14 reported disabling pain and symptoms were not as severe as she claimed because  
15 there were minimal and mild physical examination findings throughout the record  
16 and Plaintiff routinely appeared in no acute distress (NAD). Tr. 25-26. As to the  
17 notations that Plaintiff appeared in NAD, the ALJ found this inconsistent with  
18 Plaintiff's allegations of constant pain as "one would expect her treating providers  
19 to note some discomfort or pain behavior during most if not all of her medical  
20 appointments." Tr. 25-26. Notably, the medical records do not provide an



1 explanation for what the medical professionals meant by “no acute distress” to  
2 permit the ALJ to solely discount the pain and limitations alleged by Plaintiff on  
3 the basis of NAD notations. Nonetheless, the ALJ reasonably considered that the  
4 treating medical records were largely devoid of objective observations or findings  
5 of pain and limitations consistent with the degree of pain alleged by Plaintiff,  
6 particularly after the August 2015 surgery. *See, e.g.*, Tr. 867-68 (observing no  
7 swelling after surgery and recommending that Plaintiff continue with home  
8 exercises); Tr. 798 (noting “bilateral abduction to pain distally”); Tr. 806, 809, 964  
9 (noting no clubbing, cyanosis, or edema in extremities); Tr. 812, 911 (recognizing  
10 that Plaintiff “has some neuropathic diffuse pain in upper extremities” but no noted  
11 decrease in movement or strength); Tr. 900-01 (“Musculoskeletal: Incision site  
12 from ulnar surgery well healed”); Tr. 902 (“No Swelling”); Tr. 939 (“Scar medial  
13 aspect of left arm at the elbow. Sensitivity to light touch”); Tr. 944, 953 (Plaintiff  
14 had no tenderness to palpation, no edema, and with full range of motion.); Tr. 971  
15 (Even though Plaintiff’s right handgrip was weak, she had no tremors and was  
16 resting comfortably in bed.). On this record, the ALJ reasonably concluded that  
17 the medical evidence was not consistent with Plaintiff’s complaints of disabling  
18 symptoms. This finding is supported by substantial evidence and was a clear and  
19 convincing reason, combined with Plaintiff’s improvement with therapy and use of  
20

1 her upper extremities at the administrative hearing as discussed *infra*, to discount  
2 Plaintiff's symptom complaints.

3       2. *Inconsistent with Plaintiff's Improvement with Treatment*

4       The ALJ discounted Plaintiff's disabling complaints because she reported  
5 improved pain with minimal and conservative treatment. Tr. 26. The effectiveness  
6 of treatment is a relevant factor in determining the severity of a claimant's  
7 symptoms. 20 C.F.R. § 404.1529(c)(3), 416.929(c)(3); *see Warre v. Comm'r of*  
8 *Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006); *Tommasetti v. Astrue*, 533  
9 F.3d 1035, 1040 (9th Cir. 2008) (recognizing a favorable response to treatment can  
10 undermine a claimant's complaints of debilitating pain or other severe limitations).  
11 The record must reflect that the severity of the condition decreased sufficiently to  
12 permit the claimant to engage in gainful activity. *Warre*, 439 F.3d at 1006. Here,  
13 the ALJ highlighted that Plaintiff reported decreased hand pain and improved  
14 range of motion and feeling after two weeks with a physical therapist in late 2015.  
15 Tr. 26, 579-87. Plaintiff submits that this improvement must be read in the context  
16 of the overall diagnostic picture and that the record did not demonstrate that any  
17 improvements were more than temporary. ECF No. 18 at 8 (citing Tr. 842, 924,  
18 926). While Plaintiff contends this improvement was temporary, there is  
19 substantial evidence in the record reflecting that when Plaintiff engaged in physical  
20 therapy her pain and her function improved. Tr. 406-11 (noting improvement with

1 therapy from February to March 2015), Tr. 579-87 (noting improvement with  
2 therapy from September to October 2015). On this record, the ALJ reasonably  
3 discounted Plaintiff's disabling symptoms because her pain and function improved  
4 with treatment. This was a clear and convincing reason, supported by substantial  
5 evidence, to discount Plaintiff's symptoms.

6 *3. Inconsistent with Conduct at Hearing*

7 The ALJ also discounted Plaintiff's reported symptoms about her upper  
8 extremities because they were inconsistent with her physical conduct at the  
9 administrative hearing. Tr. 25. An ALJ may not solely rely on his personal  
10 observations of a claimant at the hearing to discount the claimant's testimony—a  
11 practice condemned as "sit and squirm" jurisprudence. *Perminter v. Heckler*, 765  
12 F.2d 870, 872 (9th Cir. 1985). However, the ALJ may consider the claimant's  
13 conduct at the hearing, along with the remaining evidence, to determine whether  
14 the conduct is consistent with Plaintiff's testimony and the objective evidence.

15 *Smolen*, 80 F.3d at 1284. The ALJ may then permissibly partially base his  
16 symptom-decision on the claimant's conduct at the hearing. *Id.*; *Nyman v.*  
17 *Heckler*, 779 F.2d 528, 531 (9th Cir. 1985). Here, the ALJ noted that, in spite of  
18 disabling pain complaints, Plaintiff used both of her upper extremities as part of  
19 her oral communication and moved her upper extremities frequently as she talked.  
20 Tr. 25. The ALJ found that Plaintiff's use and admission that she was able to use

1 her upper extremities while talking was inconsistent with the alleged severity of  
2 pain in her upper extremities with any activity. This was a clear and convincing  
3 reason—when considered along with Plaintiff’s improvement with treatment and  
4 the objective medical evidence—to discount Plaintiff’s reported symptoms about  
5 her upper extremities.

6 *4. Inconsistent with Activities*

7 Finally, the ALJ discounted Plaintiff’s reported disabling symptoms because  
8 they were inconsistent with her activities. Tr. 25. The ALJ may consider a  
9 claimant’s activities that undermine reported symptoms. *Rollins*, 261 F.3d at 857.  
10 If a claimant can spend a substantial part of the day engaged in pursuits involving  
11 the performance of exertional or non-exertional functions, the ALJ may find these  
12 activities inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at  
13 603; *Molina*, 674 F.3d at 1113. “While a claimant need not vegetate in a dark  
14 room in order to be eligible for benefits, the ALJ may discount a claimant’s  
15 symptom claims when the claimant reports participation in everyday activities  
16 indicating capacities that are transferable to a work setting” or when activities  
17 “contradict claims of a totally debilitating impairment.” *Molina*, 674 F.3d at 1112-  
18 13. Here, the ALJ found that despite her assertions of disabling pain, Plaintiff was  
19 able to drive a vehicle and care for a friend’s baby. Tr. 25. However, the record is  
20 insufficient to support discounting Plaintiff’s reported symptoms on the basis of

1 her driving and the undescribed childcare. As to driving, the Ninth Circuit  
2 recognizes that driving a car does not detract from a claimant's reported symptoms  
3 if those driving activities are not transferable to the work setting, emphasizing that  
4 a claimant's driving "does not mean she could concentrate on work despite the  
5 pain or could engage in similar activity for a longer period given the pain  
6 involved." *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001). There is no  
7 record that Plaintiff drove to such extent that it was consistent with work-level  
8 activity, particularly her prior work as a Substance Abuse Counselor trainee, an  
9 SVP 8. In regard to childcare, the Ninth Circuit requires that the record identify  
10 the nature, scope, and duration of "hands on" care in order to discount a claimant's  
11 reported symptoms as inconsistent with the childcare. *Trevizo v. Berryhill*, 871  
12 F.3d 664, 675-76 (9th Cir. 2017). Here, the record merely mentions that Plaintiff  
13 "has been watching her friend's baby" and contains no details as to the nature,  
14 scope, or duration of this babysitting. Tr. 817. Moreover, the same medical note  
15 mentions that Plaintiff's arms and wrists were bothering her. Tr. 817. On this  
16 record, neither Plaintiff's driving nor childcare serve as a basis to discount her  
17 reported symptoms. However, this error is harmless because the ALJ listed  
18 additional reasons supported by substantial evidence for discrediting Plaintiff's  
19 disabling symptom complaints. *See Carmickle*, 533 F.3d at 1162-63; *Molina*, 674  
20 F.3d at 1115 ("[S]everal of our cases have held that an ALJ's error was harmless

1 where the ALJ provided one or more invalid reasons for disbelieving a claimant’s  
2 testimony, but also provided valid reasons that were supported by the record.”).

### 3 **E. Medical Opinion Evidence**

4 Plaintiff contends the ALJ improperly weighed the opinions of Daniel  
5 Kwon, M.D.; Wayne Hurley, M.D.; Chad Mongrain, M.D.; and Jackie Earl, OT/L.  
6 ECF No. 15 at 17-20.

7 There are three types of physicians: “(1) those who treat the claimant  
8 (treating physicians); (2) those who examine but do not treat the claimant  
9 (examining physicians); and (3) those who neither examine nor treat the claimant  
10 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”  
11 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).  
12 Generally, a treating physician’s opinion carries more weight than an examining  
13 physician’s opinion, and an examining physician’s opinion carries more weight  
14 than a reviewing physician’s opinion. *Id.* at 1202. “In addition, the regulations  
15 give more weight to opinions that are explained than to those that are not, and to  
16 the opinions of specialists concerning matters relating to their specialty over that of  
17 nonspecialists.” *Id.* (citations omitted).

18 If a treating or examining physician’s opinion is uncontradicted, the ALJ  
19 may reject it only by offering “clear and convincing reasons that are supported by  
20 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

1 “However, the ALJ need not accept the opinion of any physician, including a  
2 treating physician, if that opinion is brief, conclusory, and inadequately supported  
3 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
4 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or  
5 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ  
6 may only reject it by providing specific and legitimate reasons that are supported  
7 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-  
8 31). The opinion of a nonexamining physician may serve as substantial evidence if  
9 it is supported by other independent evidence in the record. *Andrews v. Shalala*,  
10 53 F.3d 1035, 1041 (9th Cir. 1995).

11 *1. Dr. Kwon and Dr. Hurley*

12 Dr. Kwon, who treated Plaintiff, diagnosed Plaintiff in December 2014 with  
13 complex regional pain syndrome and ulnar neuropathy on the right upper extremity  
14 and mild chronic pain on the left upper extremity, and then in November 2016  
15 diagnosed Plaintiff with complex regional pain syndrome of the upper extremities  
16 and ulnar neuropathy on the left upper extremity. Tr. 488, 798. In December  
17 2014, Dr. Kwon opined that repetitive activity could flare-up Plaintiff’s pain but  
18 that Plaintiff was capable of performing “light work” as defined on the form: lift  
19 twenty pounds maximum, lift ten pounds frequently, walk or stand six out of eight  
20 hours per day, and sit most of the time with occasional pushing and pulling of arm

1 or leg controls. Tr. 489. Dr. Kwon opined that it was unknown how long  
2 Plaintiff's conditions would impact her ability to work as certain treatments were  
3 limited by the insurer and identified that medication trials, infusion of certain  
4 medications, and advanced spinal procedures would help address Plaintiff's arm  
5 conditions Tr. 489-90.

6 Dr. Hurley reviewed the evidence of record as of June 2015. Tr. 94-103.  
7 Dr. Hurley determined that Plaintiff suffered from fibromyalgia and that Plaintiff  
8 was limited to occasionally lifting twenty pounds; frequently lifting ten pounds;  
9 sitting and walking for six hours; sitting for six hours; frequently climbing ramps,  
10 stairs, ladders, ropes, scaffolds, stooping, kneeling, crouching, and crawling;  
11 occasionally handling, fingering, reaching overhead, and reaching laterally with  
12 her right arm; and avoiding concentrated exposure to extreme heat and vibrations.  
13 Tr. 98-101.

14 The ALJ gave significant weight to Dr. Kwon's and Dr. Hurley's opinions.  
15 Tr. 26. An ALJ must set forth specific, legitimate reasons for crediting one  
16 medical opinion over a conflicting opinion. *Garrison*, 759 F.3d at 1012-13; *Lester*,  
17 81 F.3d at 831.

18 First, the ALJ gave significant weight to Dr. Kwon's and Dr. Hurley's  
19 opinions because they were consistent with the medical record. Tr. 26. Relevant  
20 factors to evaluating any medical opinion include the amount of relevant evidence



1 that supports the opinion and the consistency of the medical opinion with the  
2 record as a whole. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007);  
3 *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Here, the ALJ found that Dr.  
4 Kwon's and Dr. Hurley's opinions were consistent with the generally minimal  
5 physical examination findings and the lack of observations that Plaintiff presented  
6 in pain. As discussed *supra*, the ALJ reasonably found that the physical  
7 examination findings were generally minimal or remedied by an RFC that limited  
8 Plaintiff to occasional reaching, handling, and fingering with her right upper  
9 extremity. The ALJ also reasonably found that the record reflected few  
10 observations that Plaintiff was in considerable pain. These were legitimate and  
11 specific reasons, supported by substantial evidence, to give significant weight to  
12 Dr. Kwon's and Dr. Hurley's opinions.

13         The ALJ also gave significant weight to Dr. Kwon's and Dr. Hurley's  
14 opinions because they were consistent with Plaintiff's activities. Tr. 26. An ALJ  
15 may discount a medical source opinion to the extent it conflicts with the claimant's  
16 daily activities. *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 541, 601-02 (9th  
17 Cir. 1999). As discussed *supra*, the record contains insufficient information about  
18 Plaintiff's driving and child care to serve as a basis to support Dr. Kwon's and Dr.  
19 Hurley's opinions. However, this error is harmless because the ALJ provided

1 another legally sufficient reason for crediting Dr. Kwon's and Dr. Hurley's  
2 opinions over the other sources. *See Tommasetti*, 533 F.3d at 1038.

3 Finally, the ALJ noted that Plaintiff's limitations were accounted for in the  
4 RFC. Tr. 26. As discussed *supra*, the ALJ rationally found that Plaintiff's left  
5 upper extremity condition was non-severe and thus no limitations for the left upper  
6 extremity, beyond the bilateral lift and carry limitations, were incorporated into the  
7 RFC. Tr. 23. As to Plaintiff's right upper extremity, the RFC reasonably restricted  
8 Plaintiff to occasional reaching, handling, and fingering, consistent with Dr.  
9 Kwon's and Dr. Hurley's opinions. Tr. 23, 101, 489. Moreover, Plaintiff fails to  
10 establish any harm resulting from the RFC not including a bilateral occasional-  
11 manipulative limitation, as the vocational expert testified that Plaintiff would still  
12 be able to work as a substance abuse counselor with an occasional bilateral  
13 manipulative limitation. Tr. 65-66. *See Molina*, 674 F.3d at 1121-22.

#### 14 2. *Dr. Mongrain and Ms. Earl*

15 Dr. Mongrain treated Plaintiff's physical impairments and Ms. Earl  
16 evaluated Plaintiff's physical impairments. Tr. 492-95. In June 2015, they jointly  
17 diagnosed Plaintiff with injury of the ulnar nerve neuropathy, right hand carpal  
18 tunnel syndrome, lateral epicondylitis, and medial epicondylitis and opined that  
19 Plaintiff had decreased bilateral gripping and pinching abilities; had a poor ability  
20 to tolerate repetitive reaching, grasping, and pinching; should avoid vibratory

1 tasks; and was permanently unable to sustain full time or part-time work. Tr. 492-  
2 94.

3 The ALJ assigned little weight to Dr. Mongrain and Ms. Earl's opinion. Tr.  
4 27. Because Dr. Mongrain and Ms. Earl's opinion was inconsistent with Dr.  
5 Kwon's opinion, Tr. 488-90, the ALJ was required to provide specific and  
6 legitimate reasons for discounting Dr. Mongrain and Ms. Earl's opinion. *See*  
7 *Bayliss*, 427 F.3d at 1216.

8 First, the ALJ discounted Dr. Mongrain and Ms. Earl's extreme limitations  
9 because they were inconsistent with the medical record. Tr. 27. Relevant factors  
10 to evaluating any medical opinion include the amount of relevant evidence that  
11 supports the opinion and the consistency of the medical opinion with the record as  
12 a whole. *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at 631. Here, Plaintiff  
13 submits the ALJ failed to explain why his interpretation of the medical record—  
14 that the record generally reflected minimal physical examination findings and a  
15 lack of observations of Plaintiff presenting in pain—rather than Dr. Mongrain and  
16 Ms. Earl's interpretation was correct. ECF No. 15 at 19-20. However, the ALJ  
17 previously in his opinion summarized the physical examination findings and the  
18 providers' observations and reasonably concluded that these findings and  
19 observations were inconsistent with limitations beyond those set forth in the RFC.  
20 Tr. 25-27. The medical records following Plaintiff's August 2015 surgery, which

1 was within a year of Plaintiff's alleged disability onset date, reflect that Plaintiff's  
2 limitations with her left upper extremity were minor, Plaintiff's right upper  
3 extremity pain would be minimized by limiting Plaintiff to occasional use of her  
4 right upper extremity (along with bilateral lifting and carrying restriction), and  
5 Plaintiff retained the mental ability to sustain work. This was a legitimate and  
6 specific reason, supported by substantial evidence, to discount Dr. Mongrain and  
7 Ms. Earl's joint opinion.

8       Second, the ALJ gave little weight to this joint opinion because there was no  
9 record that Mrs. Earl was a treating provider and thus her opinion was based on a  
10 one-time examination of Plaintiff. Tr. 27. The number of times a claimant meets  
11 with a provider is a relevant factor in assigning weight to an opinion. 20 C.F.R. §§  
12 404.1527(c), 416.927(c). Additionally, the extent to which a medical source is  
13 "familiar with the other information in [the claimant's] case record" is relevant in  
14 assessing the weight of that source's medical opinion. 20 C.F.R. §§ 404.1527(c),  
15 416.927(c). Here, the record reflects that Ms. Earl conducted a physical capacity  
16 evaluation and also reviewed the most recent medical notes from Dr. Mongrain,  
17 Plaintiff's treating physician. Tr. 537. Ms. Earl lost her clinic note in a computer  
18 crash and thus recompleted the physical capacity examination from memory. Tr.  
19 541, 567, 913-17. Both Ms. Earl and Dr. Mongrain signed the Physical Functional  
20 Capacity form. Tr. 916. Ms. Earl and Dr. Mongrain's opinion was inconsistent

1 with Dr. Kwon's treating opinion. It was the ALJ's responsibility to weigh the  
2 conflicting medical evidence. *Garrison*, 759 F.3d at 1012-13. Given the objective  
3 medical evidence, the ALJ reasonably gave more weight to Dr. Kwon's treating  
4 opinion that Plaintiff could perform light work with a restriction to occasional  
5 pushing and pulling than to Ms. Earl and Dr. Mongrain's opinion that Plaintiff was  
6 unable to sustain work.

7 Finally, the ALJ discounted this joint opinion because it was inconsistent  
8 with Plaintiff's activities. Tr. 27. As discussed *supra*, it was error for the ALJ to  
9 discount this joint opinion based on the unexplained driving and child care  
10 engaged in by Plaintiff. However, this error was harmless because the ALJ offered  
11 other legitimate and specific reasons, supported by substantial evidence, for  
12 discounting this joint opinion.

### 13 CONCLUSION

14 Having reviewed the record and the ALJ's findings, the Court concludes the  
15 ALJ's decision is overall supported by substantial evidence and free of harmful  
16 legal error. Accordingly, **IT IS HEREBY ORDERED:**

- 17 1. The District Court Executive is directed to **substitute Andrew M. Saul**  
18 **as the Defendant and update the docket sheet.**
- 19 2. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.

1 3. Defendant's Motion for Summary Judgment, **ECF No. 17**, is

2 **GRANTED.**

3 4. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

4 The District Court Executive is directed to file this Order, provide copies to  
5 counsel, and **CLOSE THE FILE.**

6 DATED August 7, 2019.

7 *s/Mary K. Dimke*

8 MARY K. DIMKE

9 UNITED STATES MAGISTRATE JUDGE