

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

Mar 30, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MICHAEL S.,

Plaintiff,

v.

KILOLO KIJAKAZI,  
ACTING COMMISSIONER OF  
SOCIAL SECURITY,<sup>1</sup>

Defendant.

No. 1:20-CV-03142-JAG

ORDER GRANTING DEFENDANT’S  
MOTION FOR SUMMARY  
JUDGMENT

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 19, 21. Attorney D. James Tree represents Michael S. (Plaintiff); Special Assistant United States Attorney Jeffrey Staples represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant’s Motion for Summary Judgment and **DENIES** Plaintiff’s Motion for Summary Judgment.

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<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 **JURISDICTION**

2 Plaintiff filed an application for Supplemental Security Income on April 12,  
3 2013, alleging disability beginning February 1, 2013 due to seizures, numbness in  
4 both hands, and left shoulder pain. Tr. 117. The application was denied initially  
5 and upon reconsideration. Tr. 172-80, 184-89. Administrative Law Judge (ALJ)  
6 M.J. Adams held a hearing on October 15, 2015, Tr. 41-61, and issued an  
7 unfavorable decision on November 27, 2015. Tr. 144-57. Plaintiff requested  
8 review by the Appeals Council and the Appeals Council remanded the claim on  
9 April 18, 2017, based on new and material evidence. Tr. 166-67.

10 ALJ Adams held a remand hearing on June 11, 2019, Tr. 62-115, and issued  
11 a second unfavorable decision on July 2, 2019. Tr. 15-33. Plaintiff requested  
12 review by the Appeals Council and on July 16, 2020 the Appeals Council denied  
13 the request for review. Tr. 1-5. The ALJ's July 2019 decision is the final decision  
14 of the Commissioner, which is appealable to the district court pursuant to 42  
15 U.S.C. § 405(g). Plaintiff filed this action for judicial review on September 11,  
16 2020. ECF No. 1.

17 **STATEMENT OF FACTS**

18 Plaintiff was born in 1988 and was 24 years old when he filed his  
19 application. Tr. 32. He has his GED and has a minimal work history. Tr. 47-51, 87-  
20 89, 91-94, 324, 343. He has a congenital deformity of his neck, known as Klippel-  
21 Feil Syndrome, with a number of the vertebrae in his cervical spine being fused  
22 together. Tr. 69. At his hearing he testified he was unable to work due to his  
23 physical condition, seizures, and mental health impairments. Tr. 102-08.

24 **STANDARD OF REVIEW**

25 The ALJ is responsible for determining credibility, resolving conflicts in  
26 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
27 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
28 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,

1 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
2 only if it is not supported by substantial evidence or if it is based on legal error.  
3 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
4 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
5 1098. Put another way, substantial evidence is such relevant evidence as a  
6 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
7 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
8 rational interpretation, the Court may not substitute its judgment for that of the  
9 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
10 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
11 administrative findings, or if conflicting evidence supports a finding of either  
12 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
13 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
14 supported by substantial evidence will be set aside if the proper legal standards  
15 were not applied in weighing the evidence and making the decision. *Brawner v.*  
16 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### 17 **SEQUENTIAL EVALUATION PROCESS**

18 The Commissioner has established a five-step sequential evaluation process  
19 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
20 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant  
21 bears the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d  
22 at 1098-1099. This burden is met once a claimant establishes that a physical or  
23 mental impairment prevents the claimant from engaging in past relevant work. 20  
24 C.F.R. § 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ  
25 proceeds to step five, and the burden shifts to the Commissioner to show (1) the  
26 claimant can make an adjustment to other work; and (2) the claimant can perform  
27 specific jobs that exist in the national economy. *Batson v. Comm'r of Soc. Sec.*  
28 *Admin.*, 359 F.3d 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an

1 adjustment to other work in the national economy, the claimant will be found  
2 disabled. 20 C.F.R. § 416.920(a)(4)(v).

3 **ADMINISTRATIVE FINDINGS**

4 On July 2, 2019, the ALJ issued a decision finding Plaintiff was not disabled  
5 as defined in the Social Security Act. Tr. 15-33.

6 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
7 activity since the application date. Tr. 17.

8 At step two, the ALJ determined Plaintiff had the following severe  
9 impairments: degenerative disc disease of the spine (Klippel-Feil cervical  
10 deformity) and seizure disorder. Tr. 18.

11 At step three, the ALJ found Plaintiff did not have an impairment or  
12 combination of impairments that met or medically equaled the severity of one of  
13 the listed impairments. Tr. 22-23.

14 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
15 he could perform light exertional work with some exceptions:

16 The claimant can lift and/or carry twenty pounds occasionally  
17 and ten pounds frequently, and can stand and/or walk, and sit, for  
18 about six hours in an eight-hour day with normal breaks. He can  
19 push and pull, including the operation of hand and foot controls,  
20 without limitation other than shown for the lift and carry  
21 limitations. He cannot climb ladders, ropes, or scaffolds, can  
22 frequently crouch and crawl, and can balance, stoop, kneel, and  
23 climb ramps and stairs without limitation. The claimant must  
avoid even moderate exposure to hazardous machinery and  
working at unprotected heights.

24 Tr. 23-24.

25 At step four, the ALJ found Plaintiff had no past relevant work. Tr. 32.

26 At step five, the ALJ determined that, based on the testimony of the  
27 vocational expert, and considering Plaintiff's age, education, work experience, and  
28

1 RFC, Plaintiff could perform jobs that existed in significant numbers in the  
2 national economy, including the jobs of mail room clerk, cafe attendant, and  
3 storage facility rental clerk. Tr. 33.

4 The ALJ thus concluded Plaintiff was not under a disability within the  
5 meaning of the Social Security Act at any time from the application date through  
6 the date of the decision. Tr. 33.

## 7 ISSUES

8 The question presented is whether substantial evidence supports the ALJ's  
9 decision denying benefits and, if so, whether that decision is based on proper legal  
10 standards.

11 Plaintiff contends the ALJ erred by (1) denying the claim despite issuing an  
12 RFC consistent with disability; (2) improperly assessing the Listings; (3)  
13 improperly rejecting Plaintiff's symptom testimony; and (4) not properly assessing  
14 the medical opinions.

## 15 DISCUSSION

### 16 1. The RFC

17 Plaintiff argues the RFC is consistent with disability, due to limiting Plaintiff  
18 to a combined total of six hours of standing, walking and sitting. ECF No. 19 at 4.  
19 The Court finds this argument unavailing. The hypothetical posed to the vocational  
20 expert indicates the ALJ meant six hours of sitting and six hours of standing or  
21 walking. Tr. 110. This is further reflected in the ALJ's reference to the regulatory  
22 definition of light work and the punctuation used in the decision. Tr. 23. The RFC  
23 does not limit Plaintiff to less than an eight-hour workday.

### 24 2. Listing 14.09C

25 Plaintiff argues the ALJ erred in his analysis of Plaintiff's impairments in  
26 relation to Listing 14.09 for inflammatory arthritis. ECF No. 19 at 4-10.

27 At step three of the sequential evaluation process, the ALJ considers whether  
28 one or more of the claimant's impairments meets or equals an impairment listed in

1 Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 416.920(a)(4)(iii). Each  
2 Listing sets forth the “symptoms, signs, and laboratory findings” which must be  
3 established for a claimant’s impairment to meet the Listing. *Tackett v. Apfel*, 180  
4 F.3d 1094, 1099 (9th Cir. 1999). If a condition meets or equals a Listing, the  
5 claimant is considered disabled without further inquiry. 20 C.F.R. § 416.920(d).

6 Listing 14.09 addresses inflammatory arthritis, with section C relating to  
7 ankylosing spondylitis or other spondyloarthropathies, requiring a showing of:

- 8 1. Ankylosis (fixation) of the dorsolumbar or cervical spine  
9 as shown by appropriate medically acceptable imaging  
10 and measured on physical examination at 45° or more of  
11 flexion from the vertical position (zero degrees); or
- 12 2. Ankylosis (fixation) of the dorsolumbar or cervical spine  
13 as shown by appropriate medically acceptable imaging  
14 and measured on physical examination at 30° or more of  
15 flexion (but less than 45°) measured from the vertical  
16 position (zero degrees), and involvement of two or more  
17 organs/body systems with one of the organs/body systems  
involved to at least a moderate level of severity.

18 20 C.F.R. Part 404, Subpart P, Appendix 1, section 14.09C (“Listing 14.09C”).

19 The ALJ found Plaintiff’s conditions did not meet or equal this listing  
20 because the record did not document a diagnosis of ankylosing spondylitis or other  
21 spondyloarthropathies. Tr. 23. He went on to discuss the opinions from Dr. Rox  
22 Burkett and Dr. Eric Schmitter, offering multiple reasons for discounting Dr.  
23 Burkett’s opinion that the listing was met or equaled, and noting Dr. Schmitter’s  
24 testimony that Dr. Burkett was confusing Plaintiff’s congenital abnormality with  
25 Listing 14.09 autoimmune diseases. *Id.*

26 Plaintiff argues the ALJ erred by only discussing the various opinions and  
27 failing to offer his own discussion of the objective evidence as it related to the  
28 elements of the listing. ECF No. 19 at 6. Plaintiff further asserts the ALJ’s

1 discussion of the opinions was flawed and that the record indicates Plaintiff's  
2 condition equals the listing based on the imaging and other functional limitations  
3 documented in the record. *Id.* at 4-10. Defendant argues the ALJ reasonably found  
4 the listing was not met or equaled and that his analysis of the record and the  
5 medical opinions is supported by substantial evidence. ECF No. 21 at 11-14.

6 The Court finds the ALJ did not err. As noted above, Listing 14.09C relates  
7 to ankylosing spondylitis caused by inflammatory arthritis. Plaintiff does not have  
8 inflammatory arthritis or other autoimmune diseases; he has a congenital deformity  
9 of his neck, which is an orthopedic condition. Tr. 80-81. As the medical expert  
10 testified, Listing 14.09 is not applicable to Plaintiff's condition. Tr. 75-76.

11 At the hearing and in briefing, Plaintiff asserts his condition is functionally  
12 equivalent to Listing 14.09C, relying on the evidence provided by Dr. Burkett.  
13 ECF No. 19 at 4-10; Tr. 75-82. However, as the ALJ noted, Dr. Burkett's opinion  
14 contained numerous errors, chiefly that his citation of Listing-equivalent language  
15 did not appear in the record. Tr. 23. Dr. Burkett stated "The MRI finding on  
16 27F/23 is the most important single piece of evidence to support the claimant's  
17 case. It reads: **'There is dextroconvex scoliosic pathology with the apex at C3**  
18 **showing 43 degrees of fixation. C1-2, C2-3 and C4-5 are totally fused with**  
19 **again 43 degrees of fixation.'**" Tr. 1248 (emphasis in original). However, the  
20 imaging report does not contain this language. The record cited by Dr. Burkett at  
21 27F/23 (Tr. 750) states: "There appears to be fusion at C1-2, as well as C2-3. C4  
22 and C5 are fused. C7 appears to have a transitional appearance." Tr. 750.

23 Plaintiff argues the error in citation has little to do with the assessment of the  
24 listing because the record contains documentation of the required degree of  
25 fixation, just at a different point in the record. ECF No. 19 at 6-7. However, the  
26 cited imaging report also does not contain language matching Dr. Burkett's quote:  
27 "Again seen is the C3 hemivertebrae, Klippel-Feil deformity of C2-3 and C5-6,  
28 resulting in focal dextroconvex scoliosis with an apex at C3, measuring 43 degrees.

1 C4-5 may also be fused.” Tr. 727. Nowhere in the record does the imaging show  
2 Plaintiff has the necessary *fixation* to meet or equal Listing 14.09C. The cited  
3 43-degree change relates to the scoliosis curve to Plaintiff’s neck, not a fixation  
4 due to arthritis. The ALJ reasonably discussed this evidence in his evaluation of  
5 Dr. Burkett’s opinion.

6 Furthermore, the Court takes note that Social Security Ruling 17-2p  
7 regarding medical equivalence specifically states that an adjudicator “is not  
8 required to articulate specific evidence supporting his or her finding that the  
9 individual’s impairment(s) does not medically equal a listed impairment.  
10 Generally, a statement that the individual’s impairment does not medically equal a  
11 listed impairment constitutes sufficient articulation for this finding.” Social  
12 Security Ruling 17-2p.

13 The Court finds the ALJ reasonably discussed the relevant evidence and that  
14 his assessment is supported by substantial evidence, particularly the testimony of  
15 the medical expert at the hearing. The ALJ did not err in finding Plaintiff’s  
16 conditions did not meet or equal Listing 14.09.

### 17 **3. Medical Opinion Evidence**

18 Plaintiff argues the ALJ erred in his assessment of the medical opinion  
19 evidence, specifically that of Dr. Burkett and ARNP Pierson. ECF No. 19 at 19-21.

#### 20 ***a. Dr. Burkett***

21 The Commissioner may reject the opinion of a non-examining physician by  
22 reference to specific evidence in the medical record. *Sousa v. Callahan*, 143 F.3d  
23 1240, 1244 (9th Cir. 1998).

24 Following the first unfavorable decision in 2015, Plaintiff submitted to the  
25 Appeals Council a report from Dr. Rox Burkett, who reviewed the entire file at the  
26 time and issued an opinion stating Plaintiff’s conditions equaled Listing 14.09C  
27 and that Plaintiff was limited to a less-than-sedentary RFC. Tr. 1248-50.



1           The ALJ gave this opinion very little weight with respect to the RFC and no  
2 weight regarding the listing. Tr. 23, 30. He noted multiple errors in Dr. Burkett’s  
3 opinion, including the incorrect imaging citations discussed above, Dr. Burkett’s  
4 incorrect inferences about the progression of Plaintiff’s condition and the need for  
5 surgery, and his summary of Plaintiff’s subjective complaints rather than objective  
6 evidence. Tr. 23. The ALJ further noted Dr. Burkett’s unexplained equating of  
7 Plaintiff’s Klippel-Feil syndrome with ankylosing spondylitis and found the overall  
8 opinion to be inconsistent with the minimal physical exam findings throughout the  
9 record. Tr. 30.

10           Plaintiff argues the ALJ’s assertion of errors in Dr. Burkett’s opinion had  
11 little or nothing to do with the accuracy of his opinion, as the evidence supported  
12 finding Plaintiff’s condition equivalent to Listing 14.09C, and further asserts that  
13 the ALJ accorded undue weight to the medical expert, Dr. Schmitter, due to his  
14 inaccurate testimony and lack of familiarity with the Listings. ECF No. 19 at 7-9.  
15 Defendant argues the ALJ reasonably pointed to inconsistencies in the opinion and  
16 evidence that contradicted Dr. Burkett, and reasonably assigned the opinion little  
17 weight. ECF No. 21 at 14-16.

18           The Court finds the ALJ did not err. As discussed above, the ALJ reasonably  
19 rejected Dr. Burkett’s opinion as it related to the Listings. The Court further finds  
20 that the other inconsistencies identified by the ALJ, such as the record not  
21 containing any evidence of surgery being recommended and Dr. Burkett’s  
22 unexplained equating of Plaintiff’s congenital condition to autoimmune conditions,  
23 reasonably undermine his opinion. The ALJ’s analysis is supported by the medical  
24 expert’s testimony, which constitutes substantial evidence.

25           ***b. ARNP Pierson***

26           An ALJ may discount the opinion of an “other source,” such as a nurse  
27 practitioner, if they provide “reasons germane to each witness for doing so.”  
28 *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

1 In 2013, ARNP Rebekah Pierson completed a DSHS WorkFirst disability  
2 documentation form for Plaintiff, in which she opined Plaintiff was not able to lift  
3 or do fine motor skills for more than a few minutes, and that standing or sitting for  
4 more than 15-30 minutes caused numbness in his feet. Tr. 551. She stated he was  
5 severely limited, unable to perform even sedentary work, and was unable to  
6 participate in any work or preparation for work. Tr. 551-52.

7 The ALJ gave this opinion no weight, noting Ms. Pierson was not an  
8 acceptable medical source, and had only seen Plaintiff twice at the time she  
9 completed the form. Tr. 31. The ALJ further found the related chart notes did not  
10 document any abnormal findings, which indicated the form was based on  
11 Plaintiff's subjective complaints. *Id.*

12 Plaintiff argues the ALJ erred, asserting Ms. Pierson took over treatment at a  
13 clinic where Plaintiff had been treated previously by Dr. Griffith, whose treatment  
14 notes documented objective findings supportive of the opinion. ECF No. 19  
15 at 20-21. He further argues the ALJ had no basis for assuming the opinion was  
16 more based on subjective reports than objective findings and Ms. Pierson's  
17 professional assessments, and argues that the opinion is consistent with the record  
18 as a whole. *Id.* Defendant argues the length of the treatment relationship and the  
19 lack of support from Ms. Pierson's treatment notes were both germane reasons for  
20 the ALJ to discount her opinion, and asserts there is no evidence that Ms. Pierson  
21 reviewed Dr. Griffith's treatment notes, which were from more than a year prior to  
22 Ms. Pierson's opinion and the relevant period for Plaintiff's disability claim.  
23 ECF No. 21 at 16-18.

24 The Court finds the ALJ did not err. Supportability from and consistency  
25 with the record, and the nature and length of the treatment relationship are all  
26 relevant factors for an ALJ to consider in assessing the reliability of a medical  
27 opinion. 20 C.F.R. § 416. 927(c). The ALJ reasonably read the record as lacking in  
28 objective support from Ms. Pierson's only two meetings with Plaintiff. Tr. 719-22.

1 Plaintiff cites to no evidence to support his assertion that Ms. Pierson would have  
2 reviewed Dr. Griffith's treatment records, and indeed her records indicate that  
3 Plaintiff was a "new patient" as of his April 8, 2013 appointment. Tr. 721. The  
4 ALJ's analysis is supported by substantial evidence and meets the "germane"  
5 standard for a non-acceptable medical source.

#### 6 **4. Plaintiff's Symptom Statements**

7 Plaintiff alleges the ALJ erred in rejecting his symptom testimony without  
8 providing adequate reasons. ECF No. 19 at 10-19.

9 It is the province of the ALJ to make determinations regarding a claimant's  
10 subjective complaints. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
11 However, the ALJ's findings must be supported by specific cogent reasons.  
12 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative  
13 evidence of malingering, the ALJ's reasons for rejecting a claimant's testimony  
14 must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281  
15 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

16 The ALJ found Plaintiff's medically determinable impairments could  
17 reasonably be expected to cause the alleged symptoms; however, he found  
18 Plaintiff's statements concerning the intensity, persistence and limiting effects of  
19 his symptoms were not entirely consistent with the medical evidence and other  
20 evidence in the record. Tr. 25. Specifically, the ALJ found Plaintiff's subjective  
21 complaints were inconsistent with his statements to treating providers (including  
22 evidence of drug-seeking), undermined by minimal physical exam findings and  
23 mild objective findings, inconsistent with the lack of observations of distress or  
24 discomfort, and inconsistent with Plaintiff's activities. Tr. 25-29.

25 Plaintiff argues he did not make inconsistent statements to his providers and  
26 the amount of pain he was in explains his attempts to obtain pain medication. ECF  
27 No. 19 at 11-15. He further argues the ALJ erred in finding the record did not  
28 contain objective evidence supportive of his claims and asserts the activities the

1 ALJ identified were brief or not well-documented so as to demonstrate any  
2 inconsistency. *Id.* at 16-19. Defendant argues the ALJ reasonably found Plaintiff’s  
3 statements to be inconsistent with the record and his activities, and that the record  
4 demonstrated evidence of exaggeration to obtain narcotics. ECF No. 21 at 3-11.

5 The Court finds the ALJ offered clear and convincing reasons for  
6 discounting Plaintiff’s subjective complaints. An ALJ may discount a claimant’s  
7 testimony about pain where there is evidence of drug-seeking behavior. *Coleman v.*  
8 *Saul*, 979 F.3d 751, 756 (9th Cir. 2020). While Plaintiff offers an alternative  
9 interpretation of the evidence, the Court finds the ALJ’s interpretation is  
10 reasonable and supported by substantial evidence. *Lingenfelter v. Astrue*, 504 F.3d  
11 1028, 1035 (9th Cir. 2007) (“If the evidence can reasonably support either  
12 affirming or reversing a decision, we may not substitute our judgment for that of  
13 the Commissioner.”). The ALJ pointed to evidence from multiple providers that  
14 Plaintiff was suspected of engaging in drug-seeking behavior, particularly given  
15 the largely normal exam findings. Tr. 25-26.

16 An ALJ may cite inconsistencies between a claimant’s testimony and the  
17 objective medical evidence in discounting the claimant’s symptom statements.  
18 *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009). The  
19 ALJ noted specific inconsistencies, such as Plaintiff’s allegations regarding  
20 surgery contrasted with evidence that surgery was not recommended, and  
21 inconsistencies about his seizures. Tr. 25, 27. While such inconsistencies do not  
22 necessarily demonstrate an intent to deceive, they do undermine the reliability of  
23 Plaintiff’s reports.

24 Although it cannot serve as the sole ground for rejecting a claimant’s  
25 symptom statements, objective medical evidence is a “relevant factor in  
26 determining the severity of the claimant’s pain and its disabling effects.” *Rollins v.*  
27 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). The ALJ pointed to evidence in the  
28 record demonstrating normal exam findings that undermined Plaintiff’s allegations

1 of debilitating pain. While Plaintiff points to other evidence that he argues supports  
2 his allegations, the issue is whether substantial evidence supports the ALJ's  
3 finding. The Court finds the ALJ's interpretation is reasonable and supported by  
4 substantial evidence.

5 While some of the ALJ's rationale may not be supported, any error was  
6 harmless as the ALJ offered sufficient clear and convincing reasons for findings  
7 Plaintiff's subjective statements to not be reliable. *Carmickle v. Comm'r, Soc. Sec.*  
8 *Admin.*, 533 F.3d 1160, 1163 (9th Cir. 2008) (upholding adverse credibility finding  
9 where ALJ provided four reasons to discredit claimant, two of which were invalid).

### 10 CONCLUSION

11 Having reviewed the record and the ALJ's findings, the Court finds the  
12 ALJ's decision is supported by substantial evidence and free of legal error.

13 Therefore, **IT IS HEREBY ORDERED:**

14 1. Defendant's Motion for Summary Judgment, **ECF No. 21**, is  
15 **GRANTED.**

16 2. Plaintiff's Motion for Summary Judgment, **ECF No. 19**, is **DENIED.**

17 The District Court Executive is directed to file this Order and provide a copy  
18 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant  
19 and the file shall be **CLOSED.**

20 DATED March 30, 2022.



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22   
23 JAMES A. GOEKE  
24 UNITED STATES MAGISTRATE JUDGE  
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