

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

Sep 19, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KIMBERLY M.,

Plaintiff,

v.

KILOLO KIJAKAZI,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 1:21-CV-03099-LRS

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 17. This matter was submitted for consideration without oral argument. Plaintiff is represented by attorney Cory J. Brandt. Defendant is represented by Special Assistant United States Attorney Jeffrey E. Staples. The

ORDER - 1

1 Court, having reviewed the administrative record and the parties' briefing, is fully  
2 informed. For the reasons discussed below, Plaintiff's Motion, ECF No. 15, is  
3 denied and Defendant's Motion, ECF No. 17, is granted.

#### 4 JURISDICTION

5 Kimberly M. <sup>1</sup> (Plaintiff) filed for disability insurance benefits and for  
6 supplemental security income on April 14, 2011, alleging in both applications an  
7 onset date of October 31, 2009. Tr. 190-202. Benefits were denied initially, Tr.  
8 124-30, and upon reconsideration, Tr. 133-36. Plaintiff appeared at a hearing before  
9 an administrative law judge (ALJ) on August 2, 2012. Tr. 35-79. On August 27,  
10 2012, the ALJ issued an unfavorable decision, Tr. 19-34, and the Appeals Council  
11 denied review. Tr. 1-6. Plaintiff appealed to the U.S. District Court for the Western  
12 District of Washington, and on June 23, 2014, pursuant to the stipulation of the  
13 parties, Magistrate Judge Mary Alice Theiler remanded the matter for additional  
14 proceedings. Tr. 526-36.

15 On December 3, 2015, Plaintiff appeared at a second hearing, Tr. 463-95, and  
16 on January 19, 2016, the ALJ issued another unfavorable decision. Tr. 440-62. The  
17 Appeals Council denied review, Tr. 419-23, and Plaintiff again appealed to the U.S.  
18 District Court. On February 17, 2017, United States Magistrate Judge David W.  
19 Christel remanded the matter for additional proceedings. Tr. 1124-39.

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20 <sup>1</sup> The last initial of the claimant is used to protect privacy.  
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1 On May 3, 2018, Plaintiff appeared at a third hearing. Tr. 2085-2121. On  
2 September 26, 2018, the ALJ issued a third unfavorable decision. Tr. 1948-80.  
3 Plaintiff again appealed to the U.S. District Court and on March 24, 2020, the  
4 Honorable Fred Van Sickle again remanded the matter for additional proceedings.  
5 Tr. 2012-50. After a fourth hearing on June 9, 2021, Tr. 1873-1917, the ALJ issued  
6 a fourth unfavorable decision on May 18, 2021. Tr. 1918-47. The matter is now  
7 before this Court pursuant to 42 U.S.C. § 405(g).

### 8 **BACKGROUND**

9 The facts of the case are set forth in the administrative hearing and transcripts,  
10 the ALJ's decision, and the briefs of Plaintiff and the Commissioner, and are  
11 therefore only summarized here.

12 Plaintiff was 37 years old at the time of the first hearing in 2012. Tr. 39. She  
13 completed high school. Tr. 39. She has work experience as a certified nurse's  
14 assistant and as a hospital unit clerk. Tr. 40-41. She testified that she could no  
15 longer do those jobs because she was too intimidated to talk to the doctors and  
16 would shake violently when caring for patients. Tr. 42. She had a lot of panic  
17 attacks at work. Tr. 49. In 2015, she testified that she cannot work due to morning  
18 anxiety attacks. Tr. 476. She never knows when she will wake up with debilitating  
19 pain or mental issues due to fibromyalgia. Tr. 476. She has trouble concentrating  
20 and with short-term memory. Tr. 480. In 2018, she testified that she cannot work  
21 because her severe anxiety prevents her from going places and fibromyalgia makes

1 her feel like she has the flu, with allover pain and sickness. Tr. 2100. It has gotten  
2 worse over time. Tr. 2101.

3 At the time of the fourth hearing, Plaintiff was 46 years old. Tr. 1922. She  
4 testified that she often feels like she has full body flu. Tr. 1934. She has full panic  
5 attacks about once a week. Tr. 1935. Two to three times per week she feels unable  
6 to leave the house or go anywhere. Tr. 1935. She wakes up stiff and in pain. Tr.  
7 1935. She has trouble thinking and talking. Tr. 1935. It takes her a couple of hours  
8 to be able to walk correctly. Tr. 1935. She has difficulty concentrating. Tr. 1935-  
9 36. She isolates herself at home about 50 percent of the time. Tr. 1938. She  
10 believes she has a central nervous system disorder. Tr. 1939.

### 11 STANDARD OF REVIEW

12 A district court's review of a final decision of the Commissioner of Social  
13 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
14 limited; the Commissioner's decision will be disturbed "only if it is not supported by  
15 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158  
16 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable  
17 mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and  
18 citation omitted). Stated differently, substantial evidence equates to "more than a  
19 mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted).  
20 In determining whether the standard has been satisfied, a reviewing court must  
21

1 consider the entire record as a whole rather than searching for supporting evidence in  
2 isolation. *Id.*

3 In reviewing a denial of benefits, a district court may not substitute its  
4 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
5 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one  
6 rational interpretation, [the court] must uphold the ALJ’s findings if they are  
7 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674  
8 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an ALJ’s  
9 decision on account of an error that is harmless.” *Id.* An error is harmless “where it  
10 is inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* at 1115  
11 (quotation and citation omitted). The party appealing the ALJ’s decision generally  
12 bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S.  
13 396, 409-10 (2009).

#### 14 **FIVE-STEP EVALUATION PROCESS**

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

1 cannot, considering [his or her] age, education, and work experience, engage in any  
2 other kind of substantial gainful work which exists in the national economy.” 42  
3 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

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

10 If the claimant is not engaged in substantial gainful activity, the analysis  
11 proceeds to step two. At this step, the Commissioner considers the severity of the  
12 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
13 claimant suffers from “any impairment or combination of impairments which  
14 significantly limits [his or her] physical or mental ability to do basic work  
15 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
16 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
17 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
18 §§ 404.1520(c), 416.920(c).

19 At step three, the Commissioner compares the claimant’s impairment to  
20 severe impairments recognized by the Commissioner to be so severe as to preclude a  
21 person from engaging in substantial gainful activity. 20 C.F.R. §§

1 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more severe  
2 than one of the enumerated impairments, the Commissioner must find the claimant  
3 disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

4 If the severity of the claimant's impairment does not meet or exceed the  
5 severity of the enumerated impairments, the Commissioner must pause to assess the  
6 claimant's "residual functional capacity." Residual functional capacity (RFC),  
7 defined generally as the claimant's ability to perform physical and mental work  
8 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
9 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
10 analysis.

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

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

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

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

### 12 **ALJ’S FINDINGS**

13 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
14 activity since October 31, 2009. Tr. 1880. At step two, the ALJ found that Plaintiff  
15 has the following severe impairments: anxiety disorder; depressive/affective  
16 disorder; PTSD; personality disorder; fibromyalgia; carpal tunnel syndrome; and  
17 obesity. Tr. 1880.

18 At step three, the ALJ found that Plaintiff does not have an impairment or  
19 combination of impairments that meets or medically equals the severity of one of the  
20 listed impairments. Tr. 1881. The ALJ then found that Plaintiff has the residual  
21



1 functional capacity to perform sedentary work with the following additional  
2 limitations:

3 She is only able to remember, understand, and carry out simple and  
4 routine instructions and tasks consistent with the learning and training  
5 requirements of SVP level one and two jobs. She cannot perform  
6 overhead reaching. She can frequently reach at or below shoulder  
7 level. She can perform frequent handling and fingering. She can have  
8 no contact with the public. She can work in proximity to but not in  
coordination with co-workers. She can have occasional contact with  
supervisors. She can perform occasional stooping. She cannot  
crouch, crawl, or kneel, and cannot climb ramps, stairs, ropes, ladders,  
scaffolds. She cannot work at heights; ambulate across uneven  
surfaces; or work in proximity to hazardous conditions.

9 Tr. 1883.

10 At step four, the ALJ found that Plaintiff is unable to perform any past  
11 relevant work. Tr. 1902. At step five, after considering and Plaintiff's age,  
12 education, work experience, and residual functional capacity, the ALJ found that  
13 there are jobs that exist in significant numbers in the national economy that Plaintiff  
14 can perform such as document preparer, final assembler, or addresser. Tr. 1903.  
15 Thus, the ALJ determined that Plaintiff has not been under a disability, as defined in  
16 the Social Security Act at any time from October 31, 2009, through the date of the  
17 decision. Tr. 1903.

## 18 ISSUES

19 Plaintiff seeks judicial review of the Commissioner's final decision denying  
20 disability income benefits under Title II and supplemental security income under  
21

1 Title XVI of the Social Security Act. ECF No. 15. Plaintiff raises the following  
2 issues for review:

- 3 1. Whether the ALJ properly considered Plaintiff’s testimony;
- 4 2. Whether the ALJ properly considered the medical opinions;
- 5 3. Whether the ALJ properly considered the law witness statements; and
- 6 4. Whether the ALJ made a proper step five finding.

7 ECF No. 15 at 17.

## 8 DISCUSSION

### 9 A. Symptom Testimony

10 An ALJ engages in a two-step analysis to determine whether a claimant’s  
11 testimony regarding subjective pain or symptoms is credible. “First, the ALJ must  
12 determine whether there is objective medical evidence of an underlying impairment  
13 which could reasonably be expected to produce the pain or other symptoms alleged.”  
14 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). “The claimant is not  
15 required to show that her impairment could reasonably be expected to cause the  
16 severity of the symptom she has alleged; she need only show that it could reasonably  
17 have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591  
18 (9th Cir. 2009) (internal quotation marks omitted).

19 Second, “[i]f the claimant meets the first test and there is no evidence of  
20 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
21 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the

1 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal  
2 citations and quotations omitted). “General findings are insufficient; rather, the ALJ  
3 must identify what testimony is not credible and what evidence undermines the  
4 claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir.  
5 1995)); *see also Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ  
6 must make a credibility determination with findings sufficiently specific to permit  
7 the court to conclude that the ALJ did not arbitrarily discredit claimant’s  
8 testimony.”). “The clear and convincing [evidence] standard is the most demanding  
9 required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir.  
10 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir.  
11 2002)).

12 In assessing a claimant’s symptom complaints, the ALJ may consider, *inter*  
13 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the  
14 claimant’s testimony or between her testimony and her conduct; (3) the claimant’s  
15 daily living activities; (4) the claimant’s work record; and (5) testimony from  
16 physicians or third parties concerning the nature, severity, and effect of the  
17 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

18 First, the ALJ found Plaintiff’s mental health symptoms improved with  
19 treatment. Tr. 1886. The effectiveness of treatment is a relevant factor in  
20 determining the severity of a claimant’s symptoms. 20 C.F.R. §§ 404.1529(c)(3),  
21 416.929(c)(3) (2011); *Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006

1 (9th Cir. 2006) (determining that conditions effectively controlled with medication  
2 are not disabling for purposes of determining eligibility for benefits); *Tommasetti v.*  
3 *Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing that a favorable response  
4 to treatment can undermine a claimant’s complaints of debilitating pain or other  
5 severe limitations). The ALJ cited numerous records over time showing that  
6 Plaintiff’s symptoms improved, her anxiety decreased, she was doing “remarkably  
7 well,” was stable, was “better than ever,” that her behavior and functioning were  
8 “exemplary,” and that she functioned well despite stressors. Tr. 1886 (citing Tr.  
9 295, 324-25, 344-45, 901, 892-93, 886-87, 687-88, 855-56, 844, 820-23, 785, 668).  
10 The ALJ acknowledged findings of anxious mood, tearfulness, and mild hand  
11 tremor, but noted other records do not reflect such symptoms. Tr. 1886. To the  
12 extent the evidence conflicts or is mixed, it is the ALJ’s duty to resolve conflicts and  
13 ambiguity in the medical and non-medical evidence. *See Morgan v. Comm’r of Soc.*  
14 *Sec. Admin.*, 169 F.3d 595, 599-600 (9th Cir. 1999).

15 Furthermore, the ALJ noted that despite allegations of constant anxiety,  
16 especially in social settings, Plaintiff denied anxiety to some medical providers and  
17 did not demonstrate any notable symptoms of anxiety. Tr. 1886 (citing *e.g.*, Tr.  
18 2786, 2803). She reported improvement with treatment (Tr. 2723, 2728, 2739,  
19 2750), used tools she learned in treatment to manage her anxiety (Tr. 1353, 1361),  
20 made “great strides” in managing her anxiety (Tr. 1635) and made good or excellent  
21 progress with treatment. (Tr. 2894, 2897, 2899, 2907, 2909, 2911). Plaintiff argues

1 the record “clearly shows” that her symptoms prevented her from working, even  
2 with improvement from treatment, but does not cite the record or explain how the  
3 record contradicts the ALJ’s finding. ECF No. 15 at 31. This is a clear and  
4 convincing reason supported by substantial evidence.

5 Second, the ALJ found Plaintiff’s physical symptoms are inconsistent with  
6 other evidence in the record. An ALJ may not discredit a claimant’s pain testimony  
7 and deny benefits solely because the degree of pain alleged is not supported by  
8 objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.  
9 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885  
10 F.2d 597, 601 (9th Cir. 1989). However, the medical evidence is a relevant factor in  
11 determining the severity of a claimant’s pain and its disabling effects. *Rollins*, 261  
12 F.3d at 857. Minimal objective evidence is a factor which may be relied upon in  
13 discrediting a claimant’s testimony, although it may not be the only factor. *See*  
14 *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005).

15 The ALJ found that the evidence is partially consistent with Plaintiff’s  
16 allegations, noting that some exams reflected 18/18 tender points (Tr. 2419-2426),  
17 but others were negative regarding tender points or other abnormal findings (Tr.  
18 681). Tr. 1887. The ALJ observed that objective medical findings were typically  
19 benign with no significant abnormality in any area and that imaging showed minimal  
20 or no abnormalities that were concerning to medical providers. Tr. 1887 (numerous  
21 citations). However, it is noted that fibromyalgia is a disease that eludes objective

1 measurement. *Benecke v. Barnhart*, 379 F.3d 587, 594 (9th Cir. 2004). “[A] person  
2 with fibromyalgia may have ‘muscle strength, sensory functions, and reflexes [that]  
3 are normal.’” *Revels v. Berryhill*, 874 F.3d 648, 663 (9th Cir. 2017). Normal  
4 objective examination results can be “perfectly consistent with debilitating  
5 fibromyalgia.” *Id.* at 666. To the extent the ALJ rejected Plaintiff’s symptom  
6 claims regarding fibromyalgia due to lack of objective evidence, the finding is not  
7 particularly persuasive.

8         However, the ALJ reviewed the evidence of carpal tunnel syndrome in detail  
9 and concluded that the record does not support any restriction greater than the RFC.  
10 Tr. 1887-88. The ALJ also noted that Plaintiff’s presentation was unremarkable  
11 even when she reported severe or worsening levels of pain and limitations, and when  
12 she reported 9/10 pain in her knee. Tr. 1887 (citing *e.g.*, Tr. 1331, 1333, 1666,  
13 2822-23). The ALJ’s finding is supported by substantial evidence, at least as to  
14 those impairments.

15         Third, the ALJ found inconsistencies between Plaintiff’s allegations and the  
16 record. An ALJ may reject a claimant’s testimony if her statements are inconsistent.  
17 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001). The ALJ cited  
18 Plaintiff’s ability to attend treatment visits independently and consistently despite  
19 allegations that she was disabled by her symptoms and feels like her bones are  
20 breaking two and a half weeks out of every month. Tr. 1888 (citing Tr. 1302-09).  
21 The ALJ found this inconsistent with allegations that she cannot leave her residence

1 at all two to three days per week and that she isolates in her house 50 percent of the  
2 time. Tr. 1888; *see* Tr. 1935, 1938. The ALJ also noted that Plaintiff testified that  
3 she could not work because of difficulty interacting with others and going out in  
4 public due to anxiety and panic attacks. Tr. 1890. However, the ALJ noted that in  
5 function reports and at a November 2020 exam, Plaintiff reported no problems  
6 interacting with other people. Tr. 1890-91 (citing Tr. 232-39, 248-55, 2280-87,  
7 2298-2306, 3001). The ALJ questioned Plaintiff about the inconsistency at the  
8 hearing and she stated that she only has trouble interacting with people she does not  
9 know. Tr. 1891, 1928-29. The ALJ found this to be an unsatisfactory explanation  
10 because Plaintiff shops in stores, attends appointments on a regular basis, and is able  
11 to travel, all of which suggest an ability to manage interactions with people she does  
12 not know. Tr. 1891. The ALJ also observed that Plaintiff reported an inability to  
13 tolerate essentially all medications and declined to accept physical therapy referrals,  
14 but the record reflects little or no evidence of side effects from medication. Tr. 1891  
15 (citing Tr. 1666-1782, 2773-2784); *see* Tr. 1886 (citing Tr. 1426, 1430, 1434, 1438,  
16 1446). This evidence was reasonably considered by the ALJ, and this is a clear and  
17 convincing reason supported by substantial evidence.

18 Fourth, the ALJ found Plaintiff's symptom testimony is inconsistent with her  
19 activities. Tr. 1888-89. It is reasonable for an ALJ to consider a claimant's  
20 activities which undermine claims of totally disabling pain in evaluating symptom  
21 claims. *See Rollins*, 261 F.3d at 857. Even if a claimant's daily activities do not

1 demonstrate a claimant can work, they may undermine the claimant's complaints if  
2 they suggest the severity of the claimant's limitations were exaggerated. *See*  
3 *Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009).

4 The ALJ discussed Plaintiff's allegations and activities in detail. Tr. 1888.  
5 The ALJ noted that Plaintiff cared for her daughter daily, does household chores,  
6 shops at the grocery store and the pet store, goes to appointments, went to church or  
7 Bible study at various times, advocated for herself and her daughter in a custody  
8 matter, reported that she was "on top of most things" such as budget, home  
9 organization, and parenting, and takes care of her child whether she is sick or not.  
10 Tr. 1888-89. The ALJ acknowledged that Plaintiff testified she received help from  
11 family members but did not find it believable for several reasons. Tr. 1889.  
12 Regardless, even if she received help with childcare a few times per month, the ALJ  
13 found that was not consistent with the level of disability alleged; i.e., Plaintiff would  
14 have required more help. Tr. 1889. The ALJ concluded that Plaintiff would not  
15 have been able to perform these activities if she suffered from symptoms at the level  
16 to which she testified. Tr. 1889.

17 The ALJ also observed that Plaintiff attended a large wedding and a school  
18 concert with little to no anxiety. Tr. 1890 (citing Tr. 1426, 1460, 1640). The ALJ  
19 found that although these activities were one-time events, they were large, crowded  
20 activities and her attendance was inconsistent with her allegations of being unable to  
21 unable to attend such events due to anxiety attacks in crowds or around people she



1 does not know. Tr. 1890. Plaintiff argues that the 2021 District Court decision  
2 precludes consideration of these activities and Defendant does not address this issue.  
3 ECF No. 15 at 31; Tr. 2045-46; ECF No. 17.

4 However, the ALJ also found that Plaintiff's ability to drive is inconsistent  
5 with her allegations of upper extremity symptoms and cognitive limitations. Tr.  
6 1890. Furthermore, the ALJ observed that Plaintiff traveled to Hawaii for three and  
7 a half weeks in 2011, and that she traveled to Michigan by airplane in the summer of  
8 2020 which involved a change of planes in Las Vegas both ways. Tr. 1890, 1930-  
9 31. The ALJ acknowledged that travel is not necessarily inconsistent with disability,  
10 but that Plaintiff's particular allegations of anxiety, panic attacks, and inability to be  
11 in crowds or interact with people she does not know is undermined by the type of  
12 travel she has done. Tr. 1890. This is a reasonable interpretation of the evidence.

13 Fourth, the ALJ found there is evidence of possible symptom exaggeration.  
14 Tr. 1891. An ALJ may reject a claimant's testimony if there is evidence of a  
15 tendency to exaggerate symptoms. *Tonapetyan*, 242 F.3d at 1148. However, as  
16 Plaintiff points out, the ALJ considered the same records considered by the previous  
17 ALJ, which the 2021 District Court decision found to be insufficient evidence of  
18 symptom exaggeration. ECF No. 15 at 31; Tr. 2043-44.

19 Fifth, the ALJ found Plaintiff stopped working due in part to reasons unrelated  
20 to her impairment. Tr. 1892. An ALJ may consider that a claimant stopped  
21 working for reasons unrelated to the allegedly disabling condition in evaluating

1 symptom testimony. *See Tommasetti*, 533 F.3d at 1040; *Bruton v. Massanari*, 268  
2 F.3d 824, 828 (9th Cir. 2001). The ALJ noted that Plaintiff told providers she quit  
3 her job due to anxiety and because of problems working the night shift with a three-  
4 year-old at home. Tr. 294, 1892. In April 2012, Plaintiff said she may be able to  
5 work again if she finds reliable childcare. Tr. 348, 1892. In 2015, Plaintiff testified  
6 that she could not juggle working full time and raising her child and that she could  
7 do one or the other but not both. Tr. 468, 1892. While the ALJ is correct that the  
8 record reflects Plaintiff reported that she stopped working “in part” due childcare  
9 issues, it also reflects that Plaintiff reported her anxiety and panic attacks were a  
10 factor. Tr. 475-76, 2105. This is not a clear and convincing basis for rejecting  
11 Plaintiff’s symptom claims.

12 Any error in considering Plaintiff’s symptom claims is harmless where, as  
13 here, the ALJ lists other clear and convincing reasons supported by substantial  
14 evidence for discrediting Plaintiff’s symptom complaints. *See Carmickle v.*  
15 *Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008); *Molina*, 674  
16 F.3d at 1115 (“[S]everal of our cases have held that an ALJ’s error was harmless  
17 where the ALJ provided one or more invalid reasons for disbelieving a claimant’s  
18 testimony, but also provided valid reasons that were supported by the record.”);  
19 *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)  
20 (holding that any error the ALJ committed in asserting one impermissible reason  
21

1 for claimant’s lack of credibility did not negate the validity of the ALJ’s ultimate  
2 conclusion that the claimant’s testimony was not credible).

### 3 **B. Medical Opinions**

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

15 If a treating or examining physician’s opinion is uncontradicted, an ALJ may  
16 reject it only by offering “clear and convincing reasons that are supported by

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17 <sup>2</sup>For claims filed on or after March 27, 2017, the regulations changed the framework  
18 for evaluation of medical opinion evidence. *Revisions to Rules Regarding the*  
19 *Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18,  
20 2017); 20 C.F.R. § 404.1520c.  
21

1 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
2 “However, the ALJ need not accept the opinion of any physician, including a  
3 treating physician, if that opinion is brief, conclusory and inadequately supported by  
4 clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
5 (internal quotation marks and brackets omitted). “If a treating or examining doctor’s  
6 opinion is contradicted by another doctor’s opinion, an ALJ may only reject it by  
7 providing specific and legitimate reasons that are supported by substantial  
8 evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-31).

9 Further, the opinion of an acceptable medical source, such as a physician or  
10 psychologist, is given more weight than that of an “other source.” 20 C.F.R. §§  
11 404.1527, 416.927 (2012); *Gomez v. Chater*, 74 F.3d 967, 970-71 (9th Cir. 1996).  
12 “Other sources” include nurse practitioners, physician assistants, therapists, teachers,  
13 social workers, spouses, and other non-medical sources. 20 C.F.R. §§ 404.1513(d),  
14 416.913(d) (2013). However, the ALJ is required to “consider observations by non-  
15 medical sources as to how an impairment affects a claimant’s ability to work.”  
16 *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). Pursuant to *Dodrill v.*  
17 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993), an ALJ must give reasons germane to  
18 “other source” testimony before discounting it.

19 The record contains more than 20 medical opinions. Regarding Plaintiff’s  
20 mental impairments, the ALJ gave significant weight to the state agency psychiatric  
21 consultants Leslie Postovoit, Ph.D. (Tr. 1117-19), Eugene Kester, M.D. (Tr. 1989-

1 92), and Steven Haney, M.D. (Tr. 2007-09), and gave some weight to the opinions  
2 of examining psychologists Sylvia Thorpe, Ph.D. (Tr. 922-29) and Karen Mansfield-  
3 Blair, Ph.D. (Tr. 2667-72). Regarding Plaintiff's physical impairments, the ALJ  
4 gave significant weight to the opinions of state agency reviewing physicians Gordon  
5 Hale, M.D. (Tr. 1989), and Howard Platter, M.D (Tr. 2006-07). Plaintiff argues the  
6 ALJ erred by discounting twelve other psychological opinions and three other  
7 medical opinions. ECF No. 15 at 19-20.

8 Plaintiff argues that in discounting the opinions of treating and examining  
9 providers, the ALJ improperly concluded that the longitudinal record is  
10 inconsistent with their findings. ECF No. 15 at 19-20. The consistency of the  
11 medical opinion with the record as a whole is a relevant factor in weighing the  
12 medical opinion evidence. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir.  
13 2007); *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Plaintiff argues the (1)  
14 many abnormal objective findings support the limitations assessed by providers;  
15 (2) benign findings in the record are not inconsistent with the limitations assessed  
16 and are largely irrelevant to Plaintiff's impairments. ECF No. 15 at 21, 18 at 2-3.  
17 Defendant argues that Plaintiff is asking the Court to improperly re-weigh the  
18 evidence. ECF No. 17 at 8-9. Defendant observes that the 2021 District Court  
19 decision found that treatment notes with normal exam findings from throughout the  
20 record undermine the severe limitations assessed by Dr. Colby and argues this  
21 applies more broadly to this ALJ's findings regarding numerous medical opinions.

1 ECF No. 17 at 10 (citing Tr. 2037-38). Plaintiff argues the law of the case does  
2 not apply as to this issue only because additional evidence was added to the record.

3 ECF No. 18 at 4-5

4 As discussed *supra*, the ALJ discussed the longitudinal record in detail. Tr.  
5 1886-88; *see* Tr. 1892-94. The ALJ acknowledged some findings of anxious mood  
6 or affect and tearfulness, but also observed there are numerous findings  
7 inconsistent with the functional restrictions alleged and assessed. Tr. 1886, 1892,  
8 1894. The ALJ reviewed the longitudinal record, noting that Plaintiff's symptoms  
9 responded to treatment and are not as limiting as some of the medical providers  
10 opined. Tr. 1893-94 (citing Tr. 344, 901, 892-93, 886-87, 687-88, 855-56, 844,  
11 820-23, 785, 674, 668). The ALJ noted that apart from an anxious affect, mental  
12 status exams were mostly unremarkable, with little or no abnormality in speech,  
13 eye contact, thought process, memory, attention, concentration, behavior, or  
14 judgment, and Plaintiff frequently presented as alert, cooperative and pleasant. Tr.  
15 1892 (citing Tr. 1333, 1426-27, 1430-31, 1438-39, 1442-43, 1492-93, 1548-53,  
16 1595-96, 1644-50, 1676, 1680, 1684, 1789, 1792, 1827, 2390, 2394, 2411, 2556,  
17 2559, 2647-61, 2696, 2708, 2739, 2750, 2758, 2773-81). Plaintiff argues anxious  
18 affect is the most important finding and that benign findings in other categories are  
19 less relevant. ECF No. 15 at 21. However, the ALJ acknowledged Plaintiff  
20 sometimes presented with anxious affect or mood or was tearful or had a tremor  
21 (Tr. 1358-59, 1382, 1431, 1439, 1446-47, 1466, 1648, 1813, 1823, 2374, 2396,

1 2409, 2499-2500, 2515, 2696), but also observed other times presented with no  
2 anxious affect (Tr. 1355, 1385, 1389, 1426-27, 1442-43, 1549, 1645, 2647-61).  
3 Tr. 1894. Plaintiff also argues other records show findings that suggest  
4 impairment. ECF No. 15 at 21 (citing Tr. 337-40, 349, 353, 356, 372, 375, 936,  
5 1584, 1587-88, 1836, 1838, 2355, 2670-71, 297-79, 2994-95, 2997-98). The ALJ  
6 found that Plaintiff's providers indicated her symptoms responded to treatment, she  
7 made great strides in managing her anxiety, and that Plaintiff made good or  
8 excellent progress with treatment. Tr. 1892 (citing Tr. Tr. 1635, 2723, 2728, 2739,  
9 2750, 2894, 2897, 2899, 2907, 2909, 2911).

10 Ultimately, it is the ALJ's duty to resolve conflicts and ambiguity in the  
11 medical and non-medical evidence. *See Morgan*, 169 F.3d at 599-600. It is not the  
12 role of the court to second-guess the ALJ. *Allen v. Heckler*, 749 F.2d 577, 579 (9th  
13 Cir. 1984). The court must uphold the ALJ's decision where the evidence is  
14 susceptible to more than one rational interpretation. *Magallanes v. Bowen*, 881  
15 F.2d 747, 750 (9th Cir. 1989). The existence of a legally supportable alternative  
16 resolution of the evidence does not provide a sufficient basis for reversing an  
17 ALJ's decision that is supported by substantial evidence. *Sprague*, 812 F.2d at  
18 1229. The ALJ's discussion of the evidence reflects reasonable consideration of  
19 the record. Plaintiff cites some records indicating symptoms of her impairments  
20 but does not show how the ALJ's interpretation of the evidence is incorrect or  
21 erroneous. The discussion of the evidence reasonably explains the basis for the

1 ALJ's findings and the ALJ's interpretation of the longitudinal record is supported  
2 by substantial evidence.

3 *1. Jeffrey Nelson, M.D.*

4 In July 2012, Dr. Nelson, a treating psychiatrist, completed a "Mental  
5 Impairment Questionnaire" and indicated diagnoses of generalized anxiety disorder,  
6 alcohol dependence in remission, and PTSD. Tr. 375. He opined that Plaintiff  
7 would be off task more than 25 percent of the workday and assessed marked  
8 limitations in activities of daily living, social functioning, and maintaining  
9 concentration, persistence, or pace. Tr. 376.

10 Dr. Nelson also opined that Plaintiff has experienced three episodes of  
11 decompensation. Tr. 376. He indicated that Plaintiff had a medically documented  
12 history of affective disorder "of at least 2 years' duration that has caused more than a  
13 minimal limitation of ability to do any basic work activity, with symptoms or signs  
14 currently attenuated by medication or psychosocial support" with: (1) repeated  
15 episodes of decompensation, each of extended duration; (2) residual disease process  
16 that resulted in such marginal adjustment that even a minimal increase in mental  
17 demands or change in the environment would cause the individual to  
18 decompensated; and (3) a history of 1 or more years of inability to function outside a  
19 highly supported living arrangement. Tr. 376.

20 The ALJ gave little weight to Dr. Nelson's opinion. Tr. 1894. First, the ALJ  
21 found there is no medical evidence documenting a history of decompensation



1 episodes of the type or nature indicated in the form.<sup>3</sup> Tr. 1893. An ALJ may  
2 discredit treating physicians' opinions that are unsupported by the record as a whole  
3 or by objective medical findings. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
4 1190, 1195 (9th Cir. 2004). The ALJ found this undermines Dr. Nelson's opinion  
5 and suggests that he did not understand what is contemplated by the regulations in  
6 assessing a claimant. Tr. 1893. Understanding of disability programs and their  
7 evidentiary requirements is a relevant factor in considering a medical opinion. 20

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8 <sup>3</sup> At the time of Dr. Nelson's opinion, episodes of decompensation were described  
9 in the Social Security Administration Program Operations Manual System (POMS)  
10 as, "exacerbations or temporary increases in symptoms or signs accompanied by a  
11 loss of adaptive functioning, as manifested by difficulties in performing activities  
12 of daily living, maintaining social relationships, or maintaining concentration,  
13 persistence, or pace." POMS DI 34132.009 (Mental Listings from 12/18/07 to  
14 09/28/16). Episodes of decompensation could be shown by documentation of  
15 episodes of the need for significant alteration in medication or the need for a more  
16 structured psychological support system such as hospitalizations or placement in a  
17 halfway house. *Id.* Effective January 17, 2017, episodes of decompensation are no  
18 longer a separate area of functioning. *Revisions to Rules Revised medical Criteria*  
19 *for Evaluating Mental Disorders*, 2016 WL 5341732, 81 Fed. Reg. 66138  
20 (September 16, 2016).

1 C.F.R. §§ 404.1527(c)(6); 416.927(c)(6). The ALJ also noted that Plaintiff has been  
2 able to function by living independently and caring for her child, which is  
3 inconsistent with his opinion regarding decompensation factors. Tr. 1893. This is a  
4 specific, legitimate reasons supported by substantial evidence.

5 Second, the ALJ found the opinion is inconsistent with the record as a whole.  
6 Tr. 1893-94. As discussed *supra*, this finding is supported by substantial evidence.

7 Third, the ALJ found that Dr. Nelson provided no basis for the conclusion that  
8 Plaintiff was likely to be off task for 25 percent or more of each workday and found  
9 no basis in his treatment notes. Tr. 1893. A medical opinion may be rejected if it is  
10 unsupported by medical findings. *Bray*, 554 F.3d at 1228. The ALJ also found that  
11 treatment notes from Dr. Nelson and therapist Cheryl May, who worked with Dr.  
12 Nelson, are not consistent with Dr. Nelson's opinion.<sup>4</sup> Tr. 1894. An ALJ may  
13 discount a medical source's opinion that is inconsistent with the source's other  
14 findings. *Bayliss*, 427 F.3d at 1216. The ALJ noted that office visit notes reflect  
15 treatment for mental health symptoms with primary complaints of anxiety that  
16 increased in social settings. Tr. 335-73, 1894. The ALJ acknowledged records from

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18 <sup>4</sup>The 2020 District Court decision indicated the ALJ should summarize and  
19 interpret the clinical findings of Dr. Nelson and Ms. May in evaluating Dr.  
20 Nelson's opinion. Tr. 2029. The Court finds the ALJ complied with this direction.  
21 Tr. 1894.

1 early 2012 indicate abnormalities in presentation, including anxious affect, pressured  
2 speech, and distraught presentation. Tr. 1894 (citing *e.g.*, Tr. 349, 353, 356).  
3 However, the ALJ noted that Plaintiff was experiencing a situational stressor  
4 involving the custody and care of her daughter. Tr. 1894 (citing *e.g.*, Tr. 351, 355).  
5 By April 2012, Plaintiff’s own report and presentation showed improvement in her  
6 symptoms and ability to function, and later treatment notes showed ongoing  
7 improvements and stability with unremarkable mental status exams. Tr. 335-38, 342-  
8 43, 1894. In October 2012, she was doing “remarkably well,” and her symptoms  
9 were controlled from November 2012 to February 2013. Tr. 886-87, 893-94, 901,  
10 1893-94. Ms. May noted Plaintiff’s mood and affect were “very positive, happy” and  
11 her behavior and functioning were described by Ms. May as “better than ever” in  
12 August 2013. Tr. 855-56, 1894. Her behavior and functioning were “exemplary” in  
13 October 2013, she was functioning well in March 2014, and she reported doing well  
14 in January 2015. Tr. 785, 821-23, 844, 1894. Plaintiff conclusively argues the  
15 treatment notes support Dr. Nelson’s opinion but does not cite the record or show  
16 how the ALJ’s interpretation of the record is erroneous. ECF No. 15 at 23. The  
17 ALJ’s interpretation of the treatment notes is reasonable and based on the record.  
18 This is a specific, legitimate reason supported by substantial evidence.

19       Lastly, the ALJ found that Plaintiff’s activities of caring for a child, managing  
20 social contact sufficient for shopping and airplane travel, managing her finances, and  
21 being “on top of most things” are inconsistent with Dr. Nelson’s opinion. Tr. 1895.

1 Plaintiff argues this reasoning is precluded by the previous finding of the District  
2 Court and Defendant does not address this issue. ECF No. 15 at 23; ECF No. 17 at  
3 11-12. This reasoning is not legally sufficient in this case. However, the ALJ  
4 provided other specific, legitimate reasons for the weight assigned to Dr. Nelson's  
5 opinion, so any error is harmless. *See Parra v. Astrue*, 481 F.3d 742, 747 (9th Cir.  
6 2007); *Curry v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1990); *Booz v. Sec'y of*  
7 *Health and Human Servs.*, 734 F.2d 1378, 1380 (9th Cir. 1984).

8 2. *Faulder Colby, Ph.D.*

9 Dr. Colby completed a DSHS "Psychological/Psychiatric Evaluation" form in  
10 August 2013. Tr. 933-36. He diagnosed posttraumatic stress disorder, generalized  
11 anxiety disorder, obsessive-compulsive disorder (provisional), and alcohol  
12 dependence in early full remission. Tr. 934. Dr. Colby assessed a severe limitation  
13 in the ability to complete a normal workday and work week without interruptions  
14 from psychologically based symptoms, and marked limitations in the ability to adapt  
15 to changes in a routine work setting, maintain appropriate behavior in a work setting,  
16 and set realistic goals and plan independently. Tr. 935.

17 The ALJ gave little weight to this assessment. Tr. 1895. First, the ALJ found  
18 this assessment is inconsistent with the overall treatment record which shows that  
19 Plaintiff improved with treatment and presented with largely normal mental status  
20 exams. Tr. 1895. As discussed *supra*, this reasoning is supported by substantial  
21 evidence.

1 In May 2016, Dr. Colby completed a second DSHS Psychological/Psychiatric  
2 Evaluation form. Tr. 1581-88. He diagnosed delusional disorder, generalized  
3 anxiety disorder and somatic symptom disorder. Tr. 1585. Dr. Colby assessed  
4 severe limitations in the ability to perform activities within a schedule, maintain  
5 regular attendance, and be punctual; maintain appropriate behavior in a work setting;  
6 and complete a normal workday and work week without interruptions from  
7 psychological symptom; he assessed marked limitations in the ability to adapt to  
8 changes in a routine work setting and in the ability to communicate and perform  
9 effectively in a work setting. Tr. 1585-86.

10 The ALJ gave little weight to Dr. Colby's 2016 assessment. First, the ALJ  
11 found the extreme limitations indicated by Dr. Colby are not consistent with the  
12 record as a whole. As discussed *supra*, this is a specific, legitimate reason supported  
13 by substantial evidence.

14 Second, the ALJ noted that Dr. Colby's assessment that Plaintiff is unable to  
15 complete a normal workday/workweek and maintain regular work attendance are  
16 not explained by any rationale. Tr. 1896. An ALJ need not accept a physician's  
17 opinion that is conclusory and brief and unsupported by clinical findings.  
18 *Tonapetyan*, 42 F.3d at 1149; *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th  
19 Cir.1992).

20 Third, the ALJ found that Dr. Colby had a limited understanding of the  
21 longitudinal record based on a limited access to records. Tr. 1896. The extent to

1 which a medical source is “familiar with the other information in [the claimant’s]  
2 case record” is a relevant factor in weighing a medical opinion. 20 C.F.R. §§  
3 404.1527(c), 416.927(c). Dr. Colby indicated that the only records he reviewed  
4 were his own previous report and the Social Security Administration determination  
5 against Plaintiff. Tr. 1581. Thus, the ALJ reasonably concluded that Dr. Colby’s  
6 understanding of the longitudinal record was limited. Tr. 1896.

7 Fourth, the ALJ concluded Dr. Colby relied on Plaintiff’s subjective report in  
8 considering her history and assessing limitations. Tr. 1896. A physician’s opinion  
9 may be rejected if it is based on a claimant’s subjective complaints which were  
10 properly discounted. *Tonapetyan*, 242 F.3d at 1149; *Morgan*, 169 F.3d at 602; *Fair*,  
11 885 F.2d at 604. In addition to the findings discussed *supra* regarding the reliability  
12 of Plaintiff’s symptom claims, the ALJ noted that Plaintiff reported to Dr. Colby that  
13 she had been hearing and seeing ghosts and demons for many years, and that she and  
14 her daughter had been attacked physically by them. Tr. 1584-87. The ALJ noted  
15 that Dr. Colby found the report compelling, diagnosed delusional disorder, and  
16 strongly recommended treatment of the psychotic disorder. Tr. 1584-87. The ALJ  
17 observed that Plaintiff’s report regarding ghosts and demons is found nowhere else  
18 in the extensive treatment record or in any other DSHS psychological examination.  
19 Tr. 1896 (citing *e.g.*, 292-315, 334-73, 378-418, 1350-71, 1635-65, 2351-2418,  
20 2493-2587, 2695-2771, 2974, 3002). In fact, the ALJ observed that Plaintiff denied  
21 such symptoms and denied history of paranoia, delusions, and audiovisual

1 hallucinations. Tr. 1896, 2360. For this reason, the ALJ concluded that Dr. Colby's  
2 reliance on Plaintiff's report is undermined by the record.

3 The 2020 District Court decision indicated that this is not a specific, legitimate  
4 reason for rejecting Dr. Colby's opinion because the ALJ did not show that Dr.  
5 Colby's opinion is based primarily on Plaintiff's subjective reports. Tr. 2034. Dr.  
6 Colby conducted a mental status exam and clinical testing. Tr. 1584-5, 1587-88. In  
7 the current matter, the ALJ again did not address Dr. Colby's mental status exam or  
8 clinical test findings. Nonetheless, because the ALJ cited other specific, legitimate  
9 reasons supported by substantial evidence, any error in this reasoning is harmless.

10 *See Parra*, 481 F.3d at 747.

11 3. *Aaron Burdge, Ph.D. and Janis Lewis, Ph.D.*

12 Dr. Lewis and Dr. Burdge completed "Review of Medical Evidence" forms in  
13 August 2013 and June 2016, respectively. Tr. 937-39, 1589. The ALJ gave the  
14 assessments little weight because they relied entirely on Dr. Colby's assessments  
15 without reviewing any other evidence. Tr. 1897. The ALJ rejected the opinions for  
16 the same specific, legitimate reasons provided for giving little weight to Dr. Colby's  
17 opinions. This is a legally sufficient conclusion.

18 4. *Jamie Walker, ARNP and Tyal Hughes, M.S.*

19 Ms. Walker and Ms. Hughes co-signed a "Mental Medical Source Statement"  
20 in April 2018. Tr. 1785-87. They assessed nine marked limitations and nine severe  
21 limitations in nearly every category of mental functioning. Tr. 1785-87. They

1 indicated that Plaintiff would miss four or more days of work per month and would  
2 be off task more than 50 percent of the day. Tr. 1787.

3 The ALJ gave little weight to the opinion because neither provider included  
4 any rationale explaining the extreme limitations, nor did either provider include an  
5 evaluation with objective findings supporting the limitations. Tr. 1897. A medical  
6 opinion may also be rejected by the ALJ if it is conclusory or is inadequately  
7 supported. *Bray*, 554 F.3d at 1228; *Thomas*, 278 F.3d at 957. Plaintiff argues that  
8 “treatment notes created by [Ms. Walker and Ms. Hughes] and other providers at  
9 their clinic provide more than enough support for the limitations they assessed” and  
10 that objective exams throughout the record support the limitations. ECF No. 15 at  
11 24-25. However, Plaintiff does not cite any records from either provider, and as  
12 previously discussed, the longitudinal record supports the ALJ’s conclusion. This is  
13 a germane reason for giving less weight to the joint opinion.

14 *5. Heidi Blindauer*

15 Ms. Blindauer, a WorkFirst employee, completed an undated DSHS  
16 “WorkFirst Documentation Request Form for Medical or Disability Condition.” Tr.  
17 1578-80. She stated Plaintiff’s condition is “disabling generalized anxiety disorder”  
18 and opined that Plaintiff could work zero hours per week. Tr. 1578.

19 The ALJ gave no weight to Ms. Blindauer’s opinion because she did not  
20 provide a completed evaluation with objective findings or reference to specific  
21 records consistent with the limitation assessed. Tr. 1897. The ALJ also found the



1 longitudinal record is inconsistent with her opinion. Tr. 1897. As discussed *supra*,  
2 these are both germane reasons supported by substantial evidence. Furthermore,  
3 the ALJ found her opinion is essentially a finding that Plaintiff cannot work, which  
4 is a legal conclusion reserved to the Commissioner. Tr. 1897. A medical source  
5 opinion that a claimant is “disabled” or “unable to work” is not a medical opinion  
6 and the ALJ is not required to determine that the claimant meets the statutory  
7 definition of disability. 20 CFR §§ 404.1527(d)(1), 416.927(d)(1). The  
8 determination of disability is an issue reserved to the Commissioner. Social  
9 Security Ruling (S.S.R.) 96-5p, 1996 WL 374183 at \*5 (July 2, 1996). This is also  
10 a germane reason for rejecting the opinion.

11 *6. Tasmyn Bowes, Psy.D., and Thomas Genthe, Ph.D.*

12 Dr. Bowes completed a DSHS “Psychological/Psychiatric Evaluation” form in  
13 December 2018 and diagnosed PTSD, generalized anxiety disorder, and persistent  
14 depressive disorder. Tr. 2974-79. She assessed three marked limitations as well as  
15 severe limitations in the ability to perform activities within a schedule, maintain  
16 attendance, and be punctual, and in the ability to complete a normal workday and  
17 work week without interruptions from psychological symptoms. Tr. 2977.

18 Dr. Genthe completed a DSHS “Psychological/Psychiatric Evaluation” form in  
19 November 2020 and diagnosed panic disorder, ADHD, and alcohol use disorder in  
20 sustained remission. Tr. 3002-08. He assessed five marked limitations. Tr. 3005.

1 The ALJ gave little weight to the opinions of Dr. Bowes and Dr. Genthe. Tr.  
2 1897. First, the ALJ found “neither examiner had a good understanding of the  
3 overall diagnostic picture” because they each saw Plaintiff on one occasion and  
4 reviewed no outside records. Tr. 1898 (citing Tr. 2974, 3002). The ALJ concluded  
5 the opinions of Dr. Postovoit, Dr. Kester, and Dr. Haney, were more reliable and  
6 entitled to more weight because they were able to review more of the record. Tr.  
7 1898. Plaintiff argues this is a contradictory finding, since the ALJ gave more weight  
8 to sources who never met Plaintiff than to sources who examined Plaintiff. ECF No.  
9 15 at 27. However, the ALJ explained that the reviewing opinions were more reliable  
10 because they were able to review extensive records. Tr. 1898. When the opinion of a  
11 nonexamining psychologist is consistent with other evidence, it may be entitled to  
12 greater weight than the opinion of an examining psychologist. *See Andrews v.*  
13 *Shalala*, 53 F.3d 1035, 1041-43 (9th Cir. 1995).

14 The ALJ also found that the opinions of Dr. Bowes and Dr. Genthe are not  
15 consistent with the record as a whole. Tr. 1898. The ALJ noted that they both  
16 assessed marked limitations in the ability to adapt to a work setting; maintain  
17 appropriate behavior; and communicate or perform effectively in a work setting. Tr.  
18 2977, 3005. The ALJ concluded these limitations are not consistent with the  
19 longitudinal record, discussed *supra*, based on citation to records showing Plaintiff  
20 sometimes presented with anxious affect, but most treatment notes showed few other  
21 abnormalities. Tr. 1898. The ALJ noted that Plaintiff was able to manage her

1 schedule and attend appointments on a consistent basis; she managed her daily  
2 activities consistently and independently, such as caring for her child and shopping.  
3 Tr. 1898. She also managed to travel by airplane and reported that she was “on top  
4 of most things” related to budgeting, home organization, and parenting her child. Tr.  
5 1898. These activities were reasonably cited by the ALJ as inconsistent with the  
6 limitations assessed by Drs. Bowes and Genthe and this is a specific, legitimate  
7 reason supported by substantial evidence.

8 Third, the ALJ found that the assessed limitations in completing a normal  
9 workday/workweek, performing activities within a schedule, and maintaining regular  
10 attendance are not probative or persuasive because they do not reflect precise  
11 vocational restrictions. Tr. 1898. The ALJ observed that the assessments do not  
12 reflect a specific number of days or hours each month that Plaintiff would not be able  
13 to work. Tr. 1898. Plaintiff argues it is the ALJ’s duty to resolve ambiguities in the  
14 evidence, so the ALJ should have made that determination after weighing all the  
15 evidence. ECF No. 15 at 27. However, an ALJ may reject an opinion that does “not  
16 show how [the claimant’s] symptoms translate into specific functional deficits which  
17 preclude work activity.” *Morgan*, 169 F.3d at 601. In making the RFC finding, the  
18 ALJ need only include credible limitations supported by substantial evidence.  
19 *Batson*, 359 F.3d at 1197 (holding that ALJ is not required to incorporate evidence  
20 from discounted medical opinions into the RFC). When evidence reasonably  
21 supports the ALJ’s decision and the ALJ’s interpretation of the evidence is rational,

1 the decision should stand. *Tackett*, 180 F.3d at 1098; *Morgan*, 169 F.3d at 599. This  
2 is a specific, legitimate reason supported by substantial evidence.

3 7. *Holly Petaja, Ph.D.*

4 Dr. Petaja completed a DSHS “Review of Medical Evidence” form in  
5 December 2018. Tr. 2987. She reviewed the medical reports of Dr. Bowes, Dr.  
6 Thorp, and the 2016 report of Dr. Colby. Tr. 2987. She opined that the severity and  
7 functional limitations were supported by available medical evidence but provided no  
8 functional assessment or independent diagnosis. Tr. 2987.

9 The ALJ gave no weight to the assessment because Dr. Petaja provided no  
10 functional assessment. Tr. 1898. As noted *supra*, an ALJ may reject an opinion that  
11 does not show how symptoms translate into functional limitations. *Ford v. Saul*, 950  
12 F.3d 1141, 1156 (9th Cir. 2020); *Morgan*, 169 F.3d at 601. This is a specific,  
13 legitimate reason supported by substantial evidence.

14 8. *Karen Mansfield-Blair, Ph.D.*

15 Dr. Mansfield-Blair examined Plaintiff in February 2020. Tr. 2667-2672. She  
16 diagnosed generalized anxiety disorder and posttraumatic stress disorder and made the  
17 following assessment: she would not have difficulty performing simple and repetitive  
18 tasks; she would have difficulty performing detailed and complex tasks; she would  
19 have difficulty accepting instructions from supervisors; she would not have difficulty  
20 interacting with coworkers; she would not have difficulty performing activities on a  
21 daily basis without special or added instructions; she would not have difficulty

1 maintaining regular attendance and completing a normal workday/work week without  
2 interruptions from a psychiatric condition; and she would have difficulty dealing with  
3 the usual stress encountered in the workplace. Tr. 2671-72.

4 The ALJ gave some weight to Dr. Mansfield-Blair's opinion. Tr. 1898. The  
5 ALJ found that Dr. Mansfield-Blair's assessment that Plaintiff would not have  
6 difficulty performing simple and repetitive tasks or maintaining regular attendance  
7 and completing a normal workday and work week are supported by the record. Tr.  
8 1898. However, the ALJ found that Dr. Mansfield-Blair's opinion that Plaintiff  
9 "would have difficulty" accepting instructions from supervisors and dealing with the  
10 usual stress of the workplace does not indicate a specific level of functional  
11 impairment. Tr. 1898. An ALJ may reject a medical opinion that fails to specify any  
12 functional limitations or describes limitations equivocally. *See Ford*, 950 F.3d at  
13 1156 (finding a physician's descriptions of the plaintiff's limitations "as 'limited' or  
14 'fair' were not useful because they failed to specify functional limits"); *see Jean C. v.*  
15 *Comm'r of Soc. Sec. Admin.*, No. C22-1505-DWC, 2023 WL 4106053, at \*3 (W.D.  
16 Wash. June 21, 2023) (affirming finding that inconclusive and conditional statements  
17 of "would likely be unable" to perform lacked specificity). This is a specific,  
18 legitimate reason supported by substantial evidence.

19 9. *LaRee Born, M.S.*

20 Ms. Born completed a "Mental Medical Source Statement" form in February  
21 2021. Tr. 2692-94. She assessed marked limitations in 14 functional areas, opined

1 that Plaintiff would miss four or more days of work per month, and would be off task  
2 26 to 50 percent of the workday. Tr. 2692-94.

3 The ALJ gave little weight to Ms. Born's assessment because it is  
4 unsupported and inconsistent with the record as a whole. Tr. 1899. The ALJ noted  
5 that there are no exam findings or objective findings provided to support Ms. Born's  
6 conclusions, and there is no rationale or explanation for the extreme limitations  
7 assessed. Tr. 1899. An ALJ need not accept a medical opinion that is conclusory  
8 and brief and unsupported by clinical findings. *Tonapetyan*, 42 F.3d at 1149;  
9 *Matney*, 981 F.2d at 1019. Plaintiff argues the opinion "is supported by a substantial  
10 amount of evidence and objective findings in treatment notes composed by her and  
11 others at her clinic," but does not cite any such evidence or findings. ECF No. 15 at  
12 29. The ALJ also concluded that Ms. Born's opinion is inconsistent with the  
13 longitudinal record, as discussed *supra*. Tr. 1899. The ALJ's findings are  
14 reasonable and based on the record. These are germane reasons supported by  
15 substantial evidence.

16 *10. Nina Flavin, M.D.*

17 In March 2018, Dr. Flavin, a treating rheumatologist, wrote a letter stating that  
18 fibromyalgia symptoms "can affect a person's ability to work efficiently and  
19 reliably." Tr. 1572. She stated that Plaintiff "is unable to continue working and I  
20 support her decision to apply for disability." Tr. 1572. In treatment notes from the  
21 same day, Dr. Flavin stated, "[g]iven the severity of her symptoms that she reports, I

1 certainly think that maintaining steady employment would be very difficult and I  
2 would support her decision to apply for disability.” Tr. 1838.

3 The ALJ gave little weight to Dr. Flavin’s statements. Tr. 1900-01. The  
4 ALJ found the statements are conclusory and do not contain specific functional  
5 restrictions. Tr. 1901. An ALJ may reject an opinion that does “not show how  
6 [the claimant’s] symptoms translate into specific functional deficits which preclude  
7 work activity.” *Morgan*, 169 F.3d at 601. Plaintiff essentially argues the ALJ  
8 should have overlooked the lack of functional assessment, and instead should have  
9 considered Dr. Flavin’s credential as a specialist in rheumatology in evaluating her  
10 statements. ECF No. 15 at 26. However, Plaintiff cites no authority for this  
11 proposition and the Court finds none. This is a specific, legitimate reason for  
12 giving less weight to the statements.

13 Second, the ALJ determined that Dr. Flavin’s finding that Plaintiff is  
14 disabled and unable to work is not a medical opinion. Tr. 1901. Medical opinions  
15 are statements from acceptable medical sources that reflect judgments about the  
16 nature and severity of the claimant’s impairments, including the claimant’s  
17 symptoms, diagnosis and prognosis, what the claimant can do despite any  
18 impairment, and the claimant’s physical or mental restrictions. 20 C.F.R. §§  
19 404.1527(a)(1), 416.927(a)(1). The ALJ is responsible for determining whether a  
20 claimant meets the statutory definition of disability, not a physician. SSR 96-5p,  
21 1996 WL 374183 at \*5 (July 2, 1996). A medical source statement that a claimant

1 is “disabled” or “unable to work” does not require the ALJ to determine the  
2 claimant meets the definition of disability. 20 CFR §§ 404.1527(d)(1),  
3 416.927(d)(1). This is a specific, legitimate reason supported by substantial  
4 evidence.

5 The ALJ also considered that Dr. Flavin only saw Plaintiff once in January  
6 before her March 2021 statements of disability. Tr. 1901. The ALJ observed that  
7 Dr. Flavin’s two examinations of Plaintiff found no abnormal musculoskeletal or  
8 neurological findings. Tr. 1901 (citing Tr. 1836, 1838). Plaintiff argues the ALJ  
9 improperly considered benign findings because Dr. Flavin found Plaintiff had 18  
10 out of 18 tender points on examination. ECF No. 15 at 26. The Court notes that  
11 the tender points finding lends credibility to the diagnosis of fibromyalgia, but the  
12 Plaintiff cites no authority or evidence indicating that there is a nexus between  
13 tender points and any specific functional limitations. Nonetheless, a lack of  
14 objective evidence is not typically a legitimate basis for rejecting an assessment of  
15 fibromyalgia. *See Revels*, 874 F.3d at 663. However, the ALJ also found Dr.  
16 Flavin’s statements are inconsistent with the longitudinal record, which, as  
17 discussed *supra*, is supported by substantial evidence. Even if the ALJ erred in  
18 considering a lack of supporting objective evidence, the ALJ gave other specific,  
19 legitimate reasons supported by substantial evidence and any error would be  
20 harmless. *See Parra*, 481 F.3d at 747.



1 *11. Kimberly Ferguson, PA-C*

2 Ms. Ferguson completed a DSHS “Physical Functional Evaluation” form in  
3 June 2016. Tr. 1590-1594. She listed diagnoses of chronic musculoskeletal pain and  
4 anxiety disorder. Tr. 1591. She opined that Plaintiff is severely limited, meaning  
5 unable to meet the demands of sedentary work. Tr. 1592. She noted that Plaintiff is  
6 unable to meet demands of work “due to anxiety about personal health.” Tr. 1592.

7 The ALJ gave no weight to Ms. Ferguson’s opinion to the extent it is an  
8 opinion regarding mental limitations. Tr. 1897. The ALJ noted that Ms. Ferguson  
9 did not conduct an exam regarding mental function and did not provide an evaluation  
10 with objective findings consistent with the mental limitation assessed. Tr. 1897. This  
11 is a germane reason for rejecting the mental limitations assessed by Ms. Ferguson.

12 The ALJ also gave no weight to Ms. Ferguson’s opinion regarding  
13 fibromyalgia and musculoskeletal pain. Tr. 1900. The ALJ noted that Ms. Ferguson  
14 did not provide a completed evaluation with objective finding supporting the assessed  
15 limitations. Tr. 1900. The ALJ observed that in fact Ms. Ferguson’s exam findings  
16 were normal. Tr. 1593-95, 1900. Further, the ALJ observed that Ms. Ferguson’s  
17 conclusion that Plaintiff cannot perform even sedentary work conflicts with her  
18 assessment that Plaintiff’s musculoskeletal pain causes no interference in the ability  
19 to perform basic work activities. Tr. 1591, 1900. As stated *supra*, a medical opinion  
20 may be rejected by the ALJ if it is conclusory, contains inconsistencies, or is  
21 inadequately supported. *Bray*, 554 F.3d at 1228; *Thomas*, 278 F.3d at 957. Plaintiff

1 argues only that lack of objective findings is not a reasonable basis to reject  
2 limitations caused by fibromyalgia but does not address the ALJ's other reasoning.  
3 ECF No. 15 at 26-27. The ALJ's reasons are germane and supported by substantial  
4 evidence.

5 *12. June Bredin, M.D.*

6 Dr. Bredin completed a DSHS "Physical Evaluation" form in December 2018.  
7 Tr. 2988-90. She diagnosed PTSD/anxiety, fibromyalgia/spinal degenerative joint  
8 disease, and paroxysmal supraventricular tachycardia and indicated that all three  
9 diagnoses were moderately severe. Tr. 2989. Dr. Bredin opined that Plaintiff is  
10 severely limited due to PTSD, meaning unable to meet the demands of sedentary  
11 work, noting that otherwise Plaintiff would be able to perform sedentary work. Tr.  
12 2990.

13 The ALJ gave little weight to Dr. Bredin's opinion that Plaintiff cannot work  
14 due to PTSD. Tr. 1899. The ALJ found that Dr. Bredin did not provide a  
15 function-by-function assessment of Plaintiff's mental symptoms, other than to  
16 assess a moderate limitation in communication. Tr. 1899. The ALJ also found that  
17 Dr. Bredin did not explain how PTSD would cause limitations preventing  
18 sedentary work. Tr. 1899. First, This inconsistency in the opinion was reasonably  
19 considered by the ALJ. *Bray*, 554 F.3d at 1228 (indicating a medical opinion may  
20 be rejected by the ALJ if it contains inconsistencies). Second, Plaintiff argues  
21 there are clinical findings in Dr. Bredin's treatment notes which support her

1 conclusions. ECF No. 15 at 28. However, Dr. Bredin did not reference any  
2 findings, and neither Plaintiff nor Dr. Bredin explained how findings such as  
3 “moderately constricted mood and affect,” “somewhat vague historian,” and “soft  
4 spoken,” translate into disabling limitations. Tr. 2992, 2995, 2998. The ALJ’s  
5 finding is supported by substantial evidence.

6 The ALJ also gave little weight to Dr. Bredin’s opinion that Plaintiff was  
7 limited to sedentary work due to her physical impairments. Tr. 1901. The ALJ found  
8 the opinion is inconsistent with Dr. Bredin’s concurrent physical examination, which  
9 was essentially normal. Tr. 2997-98. The ALJ also found Dr. Bredin’s opinion is  
10 inconsistent with the record as a whole, which, as discussed *supra*, the ALJ  
11 reasonably evaluated. Plaintiff argues the ALJ improperly considered the lack of  
12 objective evidence of fibromyalgia limitations. ECF No. 15 at 28. Nevertheless, it is  
13 noted that the RFC is for sedentary work, which is consistent with the physical  
14 limitation assessed by Dr. Bredin. Any error by the ALJ is therefore harmless. *See*  
15 *Parra*, 481 F.3d at 747.

### 16 C. Lay Witness Statements

17 Plaintiff’s sister completed third party Function Report forms in June 2011  
18 and August 2019 and submitted a letter in November 2015. Tr. 240-47, 663-64,  
19 2288-95. Two of Plaintiff’s brothers and Plaintiff’s mother submitted letters in  
20 November 2015. Tr. 665-67. An ALJ must consider the testimony of lay witnesses  
21 in determining whether a claimant is disabled. *Stout v. Comm’r of Soc. Sec. Admin.*,

1 454 F.3d 1050, 1053 (9th Cir. 2006). Lay witness testimony regarding a claimant's  
2 symptoms or how an impairment affects ability to work is competent evidence and  
3 must be considered by the ALJ. If lay testimony is rejected, the ALJ ““must give  
4 reasons that are germane to each witness.”” *Nguyen v. Chater*, 100 F.3d 1462, 1467  
5 (9th Cir, 1996) (citing *Dodrill*, 12 F.3d at 919).

6 The ALJ considered the lay witness statements of Plaintiff's sister, brothers,  
7 and mother. Tr. 1901-02. The ALJ found the statements generally reflect the same  
8 allegations made by Plaintiff which is that she cannot work due to anxiety and  
9 pain. Tr. 1901-02. Where the ALJ provides germane reasons for giving less  
10 weight to subjective testimony from one witness, similar testimony by a different  
11 witness may also be given less weight. *See Diedrich v. Berryhill*, 874 F.3d 634,  
12 645 (9th Cir. 2017); *Molina*, 674 F.3d at 1114 (“[B]ecause the ALJ provided clear  
13 and convincing reasons for rejecting the claimant's own subjective complaints, and  
14 because the lay witness's testimony was similar to such complaints, it follows that  
15 the ALJ also gave germane reasons for rejecting the lay witness's testimony.”)  
16 (quoting *Valentine*, 574 F.3d at 694 (internal quotation marks omitted)). The ALJ  
17 referenced the findings related to Plaintiff's symptom statements and the  
18 longitudinal record and gave little weight to the statements. Tr. 1902. As  
19 discussed, *supra*, the ALJ's findings are supported by substantial evidence and the  
20 reasons are germane to the lay witness statements.

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**D. Step Five**

Plaintiff contends the ALJ erred at step five because the finding that there are jobs available that Plaintiff can perform was based on an incomplete hypothetical. ECF No. 15 at 33-34. The ALJ’s hypothetical must be based on medical assumptions supported by substantial evidence in the record which reflect all of a claimant’s limitations. *Osenbrook v. Apfel*, 240 F.3D 1157, 1165 (9th Cir. 2001). The hypothetical should be “accurate, detailed, and supported by the medical record.” *Tackett*, 180 F.3d at 1101. The ALJ is not bound to accept as true the restrictions presented in a hypothetical question propounded by a claimant’s counsel. *Osenbrook*, 240 F.3d at 1164; *Magallanes*, 881 F.2d at 756-57; *Martinez v. Heckler*, 807 F.2d 771, 773 (9th Cir. 1986). The ALJ is free to accept or reject these restrictions as long as they are supported by substantial evidence, even when there is conflicting medical evidence. *Magallanes*, 881 F.2d at *id.* Plaintiff’s argument assumes the ALJ erred in evaluating the opinion evidence and Plaintiff’s testimony. Having found otherwise, the Court concludes the ALJ’s step five finding is supported by substantial evidence.

**CONCLUSION**

Having reviewed the record and the ALJ’s findings, this Court concludes the ALJ’s decision is supported by substantial evidence and free of harmful legal error.

Accordingly,

1 1. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.

2 2. Defendant's Motion for Summary Judgment, **ECF No. 17**, is **GRANTED**.

3 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
4 Order and provide copies to counsel. Judgment shall be entered for Defendant and  
5 the file shall be **CLOSED**.

6 **DATED** September 19, 2023.

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8 LONNY R. SUKO

9 Senior United States District Judge

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