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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 LISA L.,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL
11 SECURITY,

12 Defendant.

NO. 2:21-CV-0198-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

13 BEFORE THE COURT are the parties' cross-motions for summary
14 judgment (ECF Nos. 14, 15). This matter was submitted for consideration without
15 oral argument. The Court has reviewed the administrative record and the parties'
16 completed briefing, and is fully informed. For the reasons discussed below, the
17 Court **DENIES** Plaintiff's motion and **GRANTS** Defendant's motion.

18 **JURISDICTION**

19 The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).
20

1 **STANDARD OF REVIEW**

2 A district court’s review of a final decision of the Commissioner of Social
3 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
4 limited: The Commissioner’s decision will be disturbed “only if it is not supported
5 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
6 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means
7 relevant evidence that “a reasonable mind might accept as adequate to support a
8 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently,
9 substantial evidence equates to “more than a mere scintilla[,] but less than a
10 preponderance.” *Id.* (quotation and citation omitted). In determining whether this
11 standard has been satisfied, a reviewing court must consider the entire record as a
12 whole rather than searching for supporting evidence in isolation. *Id.*

13 In reviewing a denial of benefits, a district court may not substitute its
14 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
15 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one
16 rational interpretation, [the court] must uphold the ALJ’s findings if they are
17 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
18 F.3d 1104, 1111 (9th Cir. 2012), *superseded by regulation on other grounds*.
19 Further, a district court “may not reverse an ALJ’s decision on account of an error
20 that is harmless.” *Id.* An “error is harmless where it is ‘inconsequential to the

1 ultimate nondisability determination.” *Id.* at 1115 (citation omitted). The party
2 appealing the ALJ’s decision generally bears the burden of establishing that it was
3 harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

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

15 The Commissioner has established a five-step sequential analysis to
16 determine whether a claimant satisfies the above criteria. *See* 20 §§
17 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
18 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
19 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
20

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(b), 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
6 claimant suffers from "any impairment or combination of impairments which
7 significantly limits [his or her] physical or mental ability to do basic work
8 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
9 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
10 however, the Commissioner must find that the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant's impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
14 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
15 severe than one of the enumerated impairments, the Commissioner must find the
16 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

17 If the severity of the claimant's impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant's "residual functional capacity" ("RFC"). RFC, defined generally as the
20 claimant's ability to perform physical and mental work activities on a sustained

1 basis despite his or her limitations (20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1)), is
2 relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv),
6 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
7 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
8 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the
9 analysis proceeds to step five.

10 At step five, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing other work in the national economy.
12 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
13 the Commissioner must also consider vocational factors such as the claimant's age,
14 education and work experience. *Id.* If the claimant is capable of adjusting to other
15 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
16 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
17 work, the analysis concludes with a finding that the claimant is disabled and is
18 therefore entitled to benefits. *Id.*

19 The claimant bears the burden of proof at steps one through four above.
20 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to

1 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
2 capable of performing other work; and (2) such work “exists in significant
3 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);
4 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

5 **ALJ’S FINDINGS**

6 In 2014 and 2015, Plaintiff filed applications for Title II period of disability
7 and disability insurance benefits and Title XVI supplemental security income. Tr.
8 195, 202. The applications were denied initially and on reconsideration. Tr. 15.
9 Plaintiff appeared at a hearing before an administrative law judge (“ALJ”) in 2017.
10 Tr. 45-88. On May 2, 2018, the ALJ denied Plaintiff’s claims. Tr. 12-30. In 2019,
11 following an appeal to this Court, the Court granted the parties’ stipulation to a
12 remand. Tr. 1181-82. After remand, on July 23, 2020 and January 11, 2021,
13 hearings were held before another ALJ. Tr. 1072, 1109. On April 21, 2021, the
14 ALJ denied Plaintiff’s claim. Tr. 1037-1057.

15 At step one of the sequential evaluation process, the ALJ found Plaintiff had
16 not engaged in substantial gainful activity since May 30, 2014, the alleged onset
17 date. Tr. 1042. At step two, the ALJ found Plaintiff had the following severe
18 impairments: coronary artery disease, history of Wolfe-Parkinson-White syndrome
19 (requiring ablation and pacemaker), diabetes with peripheral neuropathy, anxiety
20 disorder versus post-traumatic stress disorder (PTSD), and organic mental disorder

1 versus cognitive disorder, not otherwise specified. Tr. 1043. At step three, the
2 ALJ found Plaintiff did not have an impairment or combination of impairments
3 that meets or medically equals the severity of a listed impairment. Tr. 1043. The
4 ALJ then found Plaintiff had the RFC to perform light work with the following
5 nonexertional limitations:

6 [Plaintiff] can lift/carry 20 pounds occasionally and 10 pounds
7 frequently; can sit for 6 hours and stand and/or walk for 2 hours
8 during an 8-hour workday, can never climb ladders, ropes or
9 scaffolds; can occasionally climb ramps and stairs, can occasionally
10 stoop, crouch, kneel, and crawl; can occasionally reach above
11 shoulder level bilaterally; can handle and finger frequently bilaterally;
12 cannot work around moving or dangerous machinery or be exposed to
13 unprotected heights; is limited to simple, routine, repetitive, low-stress
14 work; can occasionally handle simple workplace changes; can have
15 brief, superficial interaction with co-workers and the public; and can
16 have occasional interaction with supervisors (although additional time
17 for training is acceptable).

18 Tr. 1045-46.

19 At step four, the ALJ found Plaintiff was unable to perform any past relevant
20 work. Tr. 1055. At step five, the ALJ found that, considering Plaintiff's age,
education, work experience, RFC, and testimony from the vocational expert, there
were other jobs that existed in significant numbers in the national economy that
Plaintiff could perform such as office helper, mailroom clerk, and marking clerk.
Tr. 1056. The ALJ concluded Plaintiff was not under a disability, as defined in the

1 Social Security Act, from May 30, 2014 through April 21, 2021, the date of the
2 ALJ's decision. Tr. 1057.

3 **ISSUES**

4 Plaintiff seeks judicial review of the Commissioner's final decision denying
5 disability insurance benefits and supplemental security income benefits under Title
6 II and Title XVI of the Social Security Act. Plaintiff raises the following issues for
7 this Court's review:

- 8 1. Whether the ALJ properly assessed the Grid Rules;
- 9 2. Whether the ALJ properly assessed Plaintiff's RFC;
- 10 3. Whether the ALJ properly assessed Plaintiff's migraines;
- 11 4. Whether the ALJ properly evaluated Plaintiff's symptom testimony; and
- 12 5. Whether the ALJ properly weighed the medical opinion evidence.

13 ECF No. 14 at 2.

14 **DISCUSSION**

15 **A. Plaintiff's Migraines**

16 Plaintiff challenges the ALJ's failure to account for Plaintiff's migraines.

17 ECF No. 14 at 6.

18 At step two of the sequential evaluation process, the ALJ considers the
19 severity of the claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii),
20 416.920(a)(4)(ii). If the claimant suffers from "any impairment or combination of

1 impairments which significantly limits [his or her] physical or mental ability to do
2 basic work activities,” the analysis proceeds to step three. 20 C.F.R. §§
3 404.1520(c), 416.920(c). “Thus, applying our normal standard of review to the
4 requirements of step two, [the Court] must determine whether the ALJ had
5 substantial evidence to find that the medical evidence clearly established that
6 [Plaintiff] did not have a medically severe impairment or combination of
7 impairments.” *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005). An
8 impairment must be established with objective medical evidence such as clinical
9 and laboratory diagnostic techniques, subjective symptoms, a diagnosis, and a
10 medical opinion are insufficient. 20 C.F.R. §§ 404.1521, 416.921. An impairment
11 is considered “not severe if it does not significantly limit your physical or mental
12 ability to do basic work activities” which include “physical functions such as
13 walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or
14 handling.” 20 C.F.R. §§ 404.1522, 416.922.

15 Step two is “a de minimis screening device [used] to dispose of groundless
16 claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). “It is not meant to
17 identify the impairments that should be taken into account when determining the
18 RFC.” *Buck v. Berryhill*, 869 F.3d 1040, 1048-49 (9th Cir. 2017). A claimant’s
19 RFC should be the same whether or not certain impairments are considered severe.
20 *Id.* at 1049. Thus, where the ALJ decides step two in the claimant’s favor, there is

1 no prejudice in failing to designate a specific impairment as severe where the ALJ
2 considers the impact of such impairment in formulating the RFC. *Id.*

3 Step two was found in Plaintiff's favor where the ALJ found multiple severe
4 impairments. Tr. 1043. Because the ALJ decided step two in Plaintiff's favor, the
5 ALJ was required to consider evidence of all impairments in assessing Plaintiff's
6 RFC. *Buck*, 869 F.3d at 1049. The ALJ's discussion at step four includes
7 consideration of Plaintiff's migraines in connection with Plaintiff's chronic neck
8 pain. Tr. 1046-47 (noting Plaintiff's migraine complaints), 1049 (finding
9 medication to be generally effective and the record insufficient to establish
10 migraines would prevent Plaintiff working one week per month). Therefore,
11 Plaintiff is not prejudiced and any error is harmless.

12 **B. Plaintiff's Symptom Testimony**

13 Plaintiff contends the ALJ failed to rely on clear and convincing reasons to
14 discredit her symptom testimony. ECF No. 14 at 11-17.

15 An ALJ engages in a two-step analysis to determine whether to discount a
16 claimant's testimony regarding subjective symptoms. Social Security Ruling
17 ("SSR") 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine whether
18 there is 'objective medical evidence of an underlying impairment which could
19 reasonably be expected to produce the pain or other symptoms alleged.'" *Molina*,
20 674 F.3d at 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)).

1 “The claimant is not required to show that her impairment ‘could reasonably be
2 expected to cause the severity of the symptom she has alleged; she need only show
3 that it could reasonably have caused some degree of the symptom.’” *Vasquez*, 572
4 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir.
5 2007)).

6 Second, “[i]f the claimant meets the first test and there is no evidence of
7 malingering, the ALJ can only reject the claimant’s testimony about the severity of
8 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
9 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
10 omitted). General findings are insufficient; rather, the ALJ must identify what
11 symptom claims are being discounted and what evidence undermines these claims.
12 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
13 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
14 explain why he or she discounted claimant’s symptom claims). “The clear and
15 convincing standard is the most demanding required in Social Security cases.”
16 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
17 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

18 Factors to be considered in evaluating the intensity, persistence, and limiting
19 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,
20 duration, frequency, and intensity of pain or other symptoms; (3) factors that

1 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and
2 side effects of any medication an individual takes or has taken to alleviate pain or
3 other symptoms; (5) treatment, other than medication, an individual receives or has
4 received for relief of pain or other symptoms; (6) any measures other than
5 treatment an individual uses or has used to relieve pain or other symptoms; and (7)
6 any other factors concerning an individual's functional limitations and restrictions
7 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7-8; 20 C.F.R.
8 §§ 416.929(c)(3), 416.929(c)(3). The ALJ is instructed to "consider all of the
9 evidence in an individual's record," "to determine how symptoms limit ability to
10 perform work-related activities." SSR 16-3p, 2016 WL 1119029, at *2.

11 The ALJ found Plaintiff's impairments could reasonably be expected to
12 cause the alleged symptoms; however, Plaintiff's statements concerning the
13 intensity, persistence, and limiting effects of those symptoms were not entirely
14 consistent with the evidence. Tr. 1047.

15 *1. Drug Seeking Behavior*

16 Exaggeration of symptoms to receive more medication is a clear and
17 convincing reason to discount a claimant's testimony. *Edlund v. Massanari*, 253
18 F.3d 1152, 1157 (9th Cir. 2001). After Plaintiff's neck surgery in November 2014,
19 the ALJ noted that Plaintiff continued to present for pain medication where the
20 surgery relieved neck pain but not other symptoms. Tr. 1048 (citing Tr. 501, 518,

1 530, 388-411). The ALJ found Plaintiff did not seek further care other than refills
2 of pain medication until 2015. *Id.* Following neck pain symptoms in late 2015,
3 Plaintiff was referred to physical and massage therapy. *Id.* (citing Tr. 674).
4 Plaintiff went to massage therapy but did not pursue physical therapy. *Id.* The
5 ALJ noted that other than pain medication refills, there is no other evidence of
6 treatment until the end of 2016. *Id.* At the end of 2016, doctors referred Plaintiff
7 to treatment for myofascial pain but the ALJ noted there was no evidence Plaintiff
8 pursued the treatment. *Id.* (citing Tr. 662). Following this history, the ALJ found
9 Plaintiff continued to present to Dr. Toliver for pain medications until 2017, when
10 she requested a referral for the treatment for opiate addiction. Tr. 1048 (citing Tr.
11 779-911). The ALJ found Plaintiff had a pattern of seeking medication that called
12 into question whether she was actually experiencing pain or was addicted to
13 narcotic pain medication and alleging pain to receive more. *Id.*

14 In finding a pattern of drug seeking behavior, the ALJ primarily relies on
15 Plaintiff's continued pattern to seek pain medications for her pain and that she did
16 not follow up with other courses of treatment. The Court will not disturb the
17 ALJ's rational interpretation of the record where the finding is adequately
18 supported. *Coleman v. Saul*, 979 F.3d 751, 756 (9th Cir. 2020). Even if this
19 finding were error, the ALJ provided other reasons to discount Plaintiff's
20 symptoms that are supported by substantial evidence. *See Carmickle v.*

1 *Commissioner*, 533 F.3d 1155, 1163 (9th Cir. 2008); *Vertigan v. Halter*, 260 F.3d
2 1044, 1050 (9th Cir. 2001) (upholding the ALJ where “the ALJ here considered
3 other factors and found additional reasons for discrediting Plaintiff’s subjective
4 symptom testimony.”).

5 *2. Course of Treatment*

6 The ALJ found Plaintiff’s alleged symptoms inconsistent with her course of
7 mental health treatment and that Plaintiff’s migraines improved with treatment. Tr.
8 1049-50. The claimant’s course of treatment is a relevant factor in determining the
9 severity of alleged symptoms. 20 C.F.R. §§ 416.929(c)(3), 416.929(c)(3). The
10 unexplained or inadequately explained failure to seek treatment or follow a
11 prescribed course of treatment may serve as a basis to discount a claimant’s alleged
12 symptoms. *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007). Relatedly,
13 improvement with treatment is another relevant factor. *Warre v. Comm’r of Soc.*
14 *Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (determining that conditions
15 effectively controlled with medication are not disabling for purposes of
16 determining eligibility for benefits); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040
17 (9th Cir. 2008) (recognizing that a favorable response to treatment can undermine a
18 claimant’s complaints of debilitating pain or other severe limitations).

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1 a. Mental Health Treatment

2 The ALJ found that Plaintiff’s course of mental health treatment inconsistent
3 with her disability allegations. Tr. 1050. First, while Plaintiff testified to
4 significant mental health symptoms, the ALJ found mental clinical findings normal
5 and that medication was effective. Tr. 1050-51 (citing Tr. 377, 414, 493, 518, 547,
6 628-652, 667, 673, 775-76, 791, 864, 890, 921, 979-1036). Second, while Plaintiff
7 alleged multiple panic attacks a week, she has only attended three therapy sessions
8 during the entire period at issue. *Id.* Third, the ALJ noted Plaintiff presented as
9 “ebullient, bubbly, and histrionic”, exhibited no signs of significant depressive
10 symptoms, and that while there was some cognitive decline and memory problems,
11 Dr. Toews did not conclude that Plaintiff was incapable of the tasks in the RFC.
12 Tr. 1051 (citing Tr. 569-580). The ALJ’s finding is supported by substantial
13 evidence.

14 b. Migraine Medication

15 The ALJ found that Plaintiff’s improvement with medication was
16 inconsistent with her disabling migraine allegations. Tr. 1049. The ALJ found
17 Topiramate to be generally effective in controlling Plaintiff’s migraines and did not
18 find sufficient evidence that monthly headaches prevented Plaintiff from working
19 one week per month. *Id.* (citing Tr. 656-763). It is the ALJ’s responsibility to
20 resolve conflicts in the medical evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039

1 (9th Cir. 1995). Plaintiff’s differing citations do not overturn the ALJ’s rational
2 interpretation of the remaining evidence in the record. *Burch*, 400 F.3d at 679
3 (“Where evidence is susceptible to more than one rational interpretation, it is the
4 ALJ’s conclusion that must be upheld.”). This finding is supported by substantial
5 evidence.

6 *3. Objective Medical Evidence*

7 The ALJ found Plaintiff’s symptom complaints regarding her cervical spine
8 and cardiac conditions inconsistent with the objective medical evidence in the
9 record. Tr. 1047-48. An ALJ may not discredit a claimant’s symptom testimony
10 and deny benefits solely because the degree of the symptoms alleged is not
11 supported by objective medical evidence. *Burch v. Barnhart*, 400 F.3d 676, 680
12 (9th Cir. 2005); *Rollins v. Massanari*, 261 F.3d 853, 856-857 (9th Cir. 2001);
13 *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d
14 597, 601 (9th Cir. 1989). However, the objective medical evidence is a relevant
15 factor, along with the medical source’s information about the claimant’s pain or
16 other symptoms, in determining the severity of a claimant’s symptoms and their
17 disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2);
18 416.929(c)(2).

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1 a. Neck-Related Evidence

2 Plaintiff injured her neck while riding horses on the alleged onset date,
3 which resulted in radiation of symptoms into her arms. Tr. 1048. In 2014, while
4 Plaintiff continued to allege bilateral upper extremity symptoms following her
5 surgery, the ALJ found examinations were consistently normal, including strength,
6 sensation, and range of motion testing. Tr. 1048 (citing Tr. 377, 391, 403, 411,
7 414). In 2015, while Plaintiff went to the ER for neck pain, the ALJ found
8 imaging showed no change, previous decompression maintained reasonable
9 structural integrity, there was no new surgical indication, and examination showed
10 full strength in the upper extremities. Tr. 1048 (citing Tr. 660, 662, 673-74, 849).
11 In 2016, while Plaintiff renewed neck complaints including radiation of pain into
12 bilateral upper extremities, the ALJ found that there was no evidence of ulnar
13 neuropathy at the elbows, cervical radiculopathy, or generalized peripheral
14 polyneuropathy affecting the upper extremities. Tr. 1048 (citing Tr. 665). Plaintiff
15 requested further surgery but the neurologist and surgeon found imaging
16 unremarkable and found examinations did not warrant surgical intervention. *Id.*
17 While Plaintiff alleged she dropped items, could not use her arms for more than
18 one hour, and could not lift more than five pounds for five minutes, the ALJ found
19 her motor testing, sensation, and range of motion tests were consistently normal
20 and EMG studies in both 2014 and 2016 were normal. Tr. 1048-49 (citing Tr. 377,

1 391, 403, 411, 414, 589, 665, 673, 679, 684, 866). The ALJ reasonably concluded
2 that the neck-related evidence was inconsistent with Plaintiff's allegations of
3 completely disabling health conditions. This finding is supported by substantial
4 evidence.

5 b. Cardiac Evidence

6 The ALJ acknowledged that the record demonstrates cardiac difficulties, but
7 that they occurred during discrete periods and that Plaintiff's cardiac condition has
8 been stable for the bulk of the record. Tr. 1049-50. The ALJ cited extensive
9 examples of Plaintiff's cardiac condition that is inconsistent with the totally
10 debilitating symptoms alleged. Plaintiff had a remote history of complications,
11 which led to cardiac catheterization and ablation in 2007, 2008, and 2010. *Id.*
12 (citing Tr. 413). Plaintiff received a pacemaker in 2015 following symptoms of
13 chest pain, and showed significant improvement in chest pain with using one to
14 two tablets of daily nitroglycerin. *Id.* (citing Tr. 606). In June 2016, Plaintiff's
15 pacemaker showed episodes of arrhythmias but no evidence of syncope. *Id.* (citing
16 Tr. 1447-1454). Plaintiff repeatedly denied cardiac symptoms during visit. *Id.*
17 (citing Tr. 1455, 1472, 1557, 1576, 1580, 1643, 1899). In March 2019, Plaintiff
18 specifically denied palpitations or presyncope symptoms and her exam showed
19 normal heart rate and rhythm. *Id.* (citing Tr. 1589). In June 2019, an
20 echocardiogram showed normal LV and no significant valvular disease, a

1 myocardial perfusion study was largely unremarkable and no arrhythmias were
2 seen, and a stress test was interpreted as low risk. Tr. 1050 (citing Tr. 786, 790,
3 1595, 1734, 2073). In November 2019, Plaintiff reported chest pain and requested
4 heart catheterization, which showed normal coronary arteries, LV and end diastolic
5 pressure. Tr. 1050 (citing Tr. 796, 1580). Plaintiff later admitted she had a
6 “mental breakdown during her admit” and that she no longer had any cardiac
7 symptoms. *Id.* (citing Tr. 1622). In January and December 2020, Plaintiff denied
8 cardiac symptoms, had a normal cardio exam, and was noted to be doing well from
9 a cardiac standpoint. *Id.* (citing Tr. 2069, 2074, 2094).

10 The ALJ reasonably concluded that the cardiac evidence was inconsistent
11 with Plaintiff’s allegations of completely disabling health conditions. This finding
12 is supported by substantial evidence. It is the ALJ’s responsibility to resolve
13 conflicts in the medical evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
14 Cir. 1995). Plaintiff’s citations do not overturn the ALJ’s rational interpretation of
15 the remaining evidence in the record. *Burch*, 400 F.3d at 679 (“Where evidence is
16 susceptible to more than one rational interpretation, it is the ALJ’s conclusion that
17 must be upheld.”). Moreover, while a different interpretation could be made as to
18 whether some objective medical evidence conflicted with Plaintiff’s reported level
19 of debilitating symptoms, the ALJ articulated several other supported grounds for
20 discounting Plaintiff’s reported symptoms. *See Carmickle v. Commissioner*, 533

1 F.3d 1155, 1163 (9th Cir. 2008); *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir.
2 2001) (upholding the ALJ where “the ALJ here considered other factors and found
3 additional reasons for discrediting Plaintiff’s subjective symptom testimony.”).

4 4. *Daily Activities*

5 The ALJ found that Plaintiff’s alleged symptoms were inconsistent with her
6 daily activities. Tr. 1050. The ALJ may consider a claimant’s activities that
7 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a
8 substantial part of the day engaged in pursuits involving the performance of
9 exertional or non-exertional functions, the ALJ may find these activities
10 inconsistent with the reported disabling symptoms. *Fair v. Bowen*, 885 F.2d 597,
11 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113. “While a claimant need not
12 vegetate in a dark room in order to be eligible for benefits, the ALJ may discredit a
13 claimant’s testimony when the claimant reports participation in everyday activities
14 indicating capacities that are transferable to a work setting” or when activities
15 “contradict claims of a totally debilitating impairment.” *Molina*, 674 F.3d at 1112-
16 13 (internal citation and quotation marks omitted).

17 Here, the ALJ found activities undermined her allegations of disabling
18 physical limitations. Tr. 1050. While Plaintiff alleged arm and grip weakness, the
19 ALJ noted Plaintiff gardened her two acre yard but alleged difficulty with arm
20 weakness and grip. *Id.* (citing Tr. 459). While Plaintiff alleged she had to elevate

1 her legs six hours per day and tried to stay off her feet, Plaintiff took her dog on
2 two-mile walks. *Id.* (citing Tr. 606). The ALJ also listed more recent records
3 detailing significant activities such as physical labor, milking cows, plans to
4 purchase a new horse, and visiting Montana. *Id.* (citing Tr. 1488-1489, 1493,
5 1503, 1570, 1630).

6 Plaintiff asserts the ALJ relied on “atypical data points.” ECF No. 14 at 15.
7 It is the ALJ’s responsibility to resolve conflicts in the medical evidence. *Andrews*
8 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Plaintiff’s citations do not overturn
9 the ALJ’s rational interpretation of the evidence in the record. *Burch*, 400 F.3d at
10 679 (“Where evidence is susceptible to more than one rational interpretation, it is
11 the ALJ’s conclusion that must be upheld.”). The ALJ reasonably concluded that
12 these activities contradicted Plaintiff’s claims of debilitating impairments. This
13 finding is supported by substantial evidence.

14 5. *Exaggeration*

15 The tendency to exaggerate provides a permissible reason to discount
16 Plaintiff’s symptoms testimony. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th
17 Cir. 2001). First, the ALJ found that Plaintiff reported a multiple sclerosis
18 diagnosis to providers despite two neurology opinions excluding the diagnosis. Tr.
19 1051 (citing Tr. 623). Second, the ALJ found that while she reported to her
20 therapist in 2016 that a “massive heart attack” limited her, it had occurred years

1 prior and cardiac records at this time indicate Plaintiff felt as good as she had 25
2 years earlier. Tr. 1051. Third, one provider found variability in her strength
3 testing and another consultative mental evaluator labeled Plaintiff as “histrionic.”
4 Tr. 1051 (citing Tr. 569-580). This finding is supported by substantial evidence.

5 The ALJ’s finding that Plaintiff’s subjective symptom testimony conflicted
6 with the evidence in a multitude of ways was clear, convincing, and properly
7 supported by substantial evidence.

8 **C. Medical Evidence**

9 Plaintiff challenges the ALJ’s evaluation of the opinions of Dr. Atteberry,
10 M.D., Dr. Krishnamurthi, M.D., Dr. Toliver, D.O., Dr. Palasi, M.D., Dr. Canaday,
11 M.D., Dr. Becerril, M.D., and Dr. Thompson, M.D. ECF No. 14 at 17-25.

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

1 to opinions that are not, and to the opinions of specialists on matters relating to
2 their area of expertise over the opinions of non-specialists. *Id.*

3 If a treating or examining physician’s opinion is uncontradicted, an ALJ may
4 reject it only by offering “clear and convincing reasons that are supported by
5 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
6 “However, the ALJ need not accept the opinion of any physician, including a
7 treating physician, if that opinion is brief, conclusory, and inadequately supported
8 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
9 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
10 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
11 may only reject it by providing specific and legitimate reasons that are supported
12 by substantial evidence.” *Id.* (citing *Lester*, 81 F.3d at 830-831). The opinion of a
13 nonexamining physician may serve as substantial evidence if it is supported by
14 other independent evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1041
15 (9th Cir. 1995).

16 *I. Dr. Atteberry, M.D.*

17 The ALJ did not address a record from Dr. Atteberry. *See* Tr. 1052-55. Dr.
18 Atteberry performed a back surgery on Plaintiff in December 2020, after which he
19 discharged Plaintiff with instructions of “no strenuous activity or lifting greater
20 than 10 pounds” and to “follow-up with [Dr. Atteberry] in 4 weeks.” Tr. 2053.

1 The ALJ need not discuss all evidence, just “significant probative evidence that has
2 been rejected.” *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95
3 (9th Cir. 1984) (internal citation omitted).

4 There is nothing in the discharge summary to indicate that the recovery
5 restriction was nothing more than temporary (check-up in 4 weeks). 42 U.S.C. §§
6 423(d)(1)(A), 1382c(a)(3)(A). Thus, this discharge summary appears neither
7 significant nor probative. The ALJ did not err.

8 *2. Dr. Krishnamurthi, M.D.*

9 The ALJ gave significant weight to non-examining doctor Dr.
10 Krishnamurthi. Tr. 1053-54. Dr. Krishnamurthi found Plaintiff’s impairments are
11 cervical degenerative disk disease and cardiac problems including Wolfe-
12 Parkinson-White condition, noting Plaintiff had a pacemaker and ablation. *Id.* Dr.
13 Krishnamurthi opined Plaintiff’s cardiac condition was stable and that the
14 condition does not meet or equal a listing. *Id.* Dr. Krishnamurthi found Plaintiff
15 would still have some restrictions due to her cervical spine problems. Tr. 1054.
16 The ALJ found Dr. Krishnamurthi was able to review the entire record with
17 medical expertise and a familiarity with Social Security regulations, and that the
18 opinion was consistent with the longitudinal medical history, objective medical
19 findings, and other treating and examining opinions in the record. *Id.*

1 Plaintiff asserts the ALJ harmfully erred by not addressing Dr.
2 Krishnamurthi's agreement with Dr. Becerril's opinion. ECF No. 14 at 18-19. Dr.
3 Krishnamurthi agreed Dr. Becerril's opinion was supported by medical evidence to
4 the extent that Plaintiff has a history of chronic medical problems, but based upon
5 Dr. Krishnamurthi's review of the record, Plaintiff would not be absent from work.
6 Tr. 1123-24. Thus, the opinion was not "internally inconsistent" to warrant
7 rejection. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). The ALJ's
8 assessment of this opinion is supported by substantial evidence.

9 *3. Dr. Toliver, D.O.*

10 The ALJ gave some weight to Dr. Toliver's January 2016 letter regarding
11 Plaintiff's physical impairments. Tr. 1052. Dr. Toliver was a treating provider
12 who opined Plaintiff's physical impairments prevented Plaintiff from doing jobs
13 that she previously performed. *Id.* The ALJ found this consistent with the finding
14 that Plaintiff was unable to perform past relevant work but found that it was not
15 indicative of a complete inability to perform any work. *Id.* However, the ALJ
16 gave little weight to Dr. Toliver's December 2016 form. Tr. 1052. Dr. Toliver
17 opined (1) Plaintiff could performed sedentary exertion no more than part time
18 based on her complaints of pain in her neck and extremities, numbness in
19 extremities, chest pain, palpitations, and dizziness, (2) Plaintiff's fatigue and pain
20 require her to lie down at least two hours during a workday, and (3) Plaintiff would

1 miss four or more days of work per month because full time work would be
2 physically overtaxing. Tr. 1052 (citing Tr. 648-50).

3 Relevant factors when evaluating a medical opinion include the amount of
4 relevant evidence that supports the opinion and the consistency of the medical
5 opinion with the record as a whole. 20 C.F.R. §§ 404.1527(c)(4), 416.927(c)(4);
6 *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Moreover, an opinion may be
7 rejected or given less weight if it is based on Plaintiff's properly discounted
8 subjective complaints. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001).
9 The ALJ found the notes rely on little more than Plaintiff's own subjective
10 complaints with no reference to any objective testing and as a result, the ALJ found
11 the opinion inconsistent with the longitudinal record, including the stability of
12 Plaintiff's cardiac symptoms, the lack of objective evidence corroborating her
13 severity of symptoms, and lack of substantiation of allegations of dizziness. Tr.
14 1052. These are specific and legitimate reasons to discount the opinion, which are
15 supported by substantial evidence.

16 4. *Dr. Palasi, M.D.*

17 The ALJ gave little weight to the August 2016 opinion of Dr. Palasi. Tr.
18 1053. Dr. Palasi opined Plaintiff was unable to sustain sedentary exertion based on
19 chronic arrhythmia and a permanent pacemaker. Tr. 778. The ALJ found this
20 opinion inconsistent with the cardiology notes from Dr. Canaday indicating cardiac

1 stability, inconsistent with Plaintiff's denial of cardiac symptoms, and the opinion
2 provided no explanation regarding how a permanent pacemaker would cause any
3 limitation in and of itself. Tr. 1053. A medical opinion may be rejected by the
4 ALJ if it is conclusory or inadequately supported. *Bray*, 554 F.3d at 1228; *Thomas*
5 *v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002). These are a specific and legitimate
6 reasons to assign the opinion little weight, which are supported by substantial
7 evidence.

8 5. *Dr. Canaday, M.D.*

9 The ALJ gave minimal weight to Dr. Canaday's November 2016 letter
10 regarding Plaintiff's cardiac condition. Tr. 1052. Dr. Canaday opined Plaintiff
11 "should be on disability" due to her cardiac history and additional health problems.
12 Tr. 1052. The ALJ found this opinion not only was of little probative value as it
13 expressed an opinion reserved to the Commissioner, but also vague. Tr. 1052-53.
14 Because Plaintiff's cardiac functioning was "fairly benign" during the period at
15 issue, the ALJ presumed Dr. Canaday's reference to Plaintiff's "cardiac history"
16 likely encompassed issues prior to May 2014. The ALJ found Dr. Canaday did not
17 specify any impairment that presented ongoing difficulties. Tr. 1053. In contrast,
18 the ALJ noted that treatment notes show normal cardiac exams and Plaintiff's
19 denial of cardiac symptoms. *Id.* (citing Tr. 796, 1445, 1447, 1472, 1557, 1576,
20 1580, 1606, 1643, 1899). A medical opinion may be rejected by the ALJ if it is

1 conclusory or inadequately supported. *Bray*, 554 F.3d at 1228; *Thomas*, 278 F.3d
2 at 957. Plaintiff challenges the ALJ’s determination that her cardiac history was
3 “benign” in contrast to this opinion. ECF No. 14 at 23. Where evidence is subject
4 to more than one rational interpretation, the ALJ’s conclusion will be upheld.
5 *Burch*, 400 F.3d at 679. This is a specific and legitimate reason to discount this
6 opinion, which is supported by substantial evidence.

7 The ALJ gave largely significant weight to Dr. Canaday’s March 2017 letter.
8 Tr. 1053. Dr. Canaday found Plaintiff’s cardiac status was stable and that it “no
9 longer represents any limitations.” Tr. 655. The ALJ found this consistent with
10 the longitudinal record. Tr. 1053. However, the ALJ found less persuasive Dr.
11 Canaday’s finding that Plaintiff “may” need to rest and elevate her legs based on
12 lower extremity edema and pain based on Plaintiff’s self-diagnosis of a previous
13 stroke and/or multiple sclerosis. *Id.* As noted *supra*, the ALJ found there was no
14 evidence of an ongoing edema, multiple sclerosis had been ruled out by two
15 neurologists, and the record does not establish Plaintiff suffered a cerebral vascular
16 accident. *Id.* Plaintiff challenges this finding because she had a 1+ non-pitting
17 edema in 2019. ECF No. 14 at 24. Where evidence is subject to more than one
18 rational interpretation, the ALJ’s conclusion will be upheld. *Burch*, 400 F.3d at
19 679. This is a specific and legitimate reason to give the opinion less weight, which
20 is supported by substantial evidence.

1 6. *Dr. Becerril, M.D.*

2 The ALJ gave Dr. Becerril’s April 2020 opinion little weight. Tr. 1054-55.
3 Dr. Becerril opined Plaintiff would miss 16 days of work per month, Plaintiff is
4 unable to meet the demands of fulltime sedentary work, and Plaintiff is physically
5 unable to travel by bus or subway because there is no such service where she lives.
6 *Id.* (citing Tr. 1398-1400). A medical opinion may be rejected by the ALJ if it is
7 conclusory or inadequately supported. *Bray*, 554 F.3d at 1228; *Thomas*, 278 F.3d
8 at 957. The ALJ found Dr. Becerril was not the treating provider on Plaintiff’s
9 primary impairments but was willing to speculate on conditions dating back to
10 before he treated Plaintiff (stated limitations have applied since 2014) and that he
11 relied on reasons other than Plaintiff’s impairments in assessing limitations (cannot
12 travel due to rural area). *Id.* These are specific and legitimate reasons to give the
13 opinion less weight, which is supported by substantial evidence.

14 7. *Dr. Thompson, M.D.*

15 The ALJ gave Dr. Thompson’s March 2015 opinion great weight. Tr. 1053.
16 Dr. Thompson opined Plaintiff was limited following cervical surgery, but that
17 Plaintiff would be capable of a light RFC after recovering from surgery. Tr. 765-
18 66. Plaintiff asserts the ALJ harmfully erred because Dr. Thompson did not make
19 a “definitive finding” of her RFC capabilities post-surgery. ECF No. 14 at 25.
20 Plaintiff provides no evidence that the ALJ could not rely on this opinion absent a

1 “definitive finding.” The ALJ found this opinion supported by the medical
2 evidence and Plaintiff’s daily activities, as discussed *supra*. Tr. 1053. The ALJ’s
3 assessment of this opinion is supported by substantial evidence.

4 In sum, the ALJ did not harmfully err in assessing each of the medical
5 opinions.

6 **D. Residual Functional Capacity**

7 Plaintiff challenges the ALJ’s RFC formulation that limited Plaintiff to
8 “occasional interaction with supervisors (although additional time for training is
9 acceptable).” ECF No. 15 at 4 (citing Tr. 1046).

10 An RFC is an assessment regarding the most a claimant is capable of despite
11 their limitations. 20 C.F.R. §§ 404.1545, 416.945. Certain jobs include specific
12 vocational preparation (“SVP”) which is “the amount of lapsed time required by a
13 typical worker to learn the techniques, acquire the information, and develop the
14 facility needed for average performance in a specific job-worker situation.” DOT,
15 App. C., 1991 WL 688702 (4th ed. 1991). An SVP 2 means “[a]nything beyond
16 short demonstration up to and including 1 month.” *Id.*

17 The ALJ found that Plaintiff could tolerate more than occasional interaction
18 with supervisors for a short period, which fit SVP 2 positions that requires training
19 for jobs that take no longer than one month. Tr. 1046. On a long term basis,
20 however, the ALJ found Plaintiff could not handle more than occasional

1 interaction with supervisors. *Id.* Plaintiff argues that a finding of occasional
2 supervisor training contact would compel disability and that the ALJ did not
3 provide any explanation for more than occasional supervisor contact for training.
4 ECF No. 14 at 5. Plaintiff cites to the Commissioner’s Program Operations
5 Manual (“POMS”) for the proposition that “occasional” is a vocation terms that
6 means the condition exists up to 1/3 of the day. ECF No. 14 at 4-5 (citing POMS
7 DI 25001.001). However, POMS is an agency interpretation that does not impose
8 judicially enforceable duties on the ALJ nor the Court. *Lockwood v. Comm’r Soc.*
9 *Sec. Admin.*, 616 F.3d 1068, 1073 (9th Cir. 2010). That Plaintiff can have more
10 than occasional interaction with a supervisor for training purposes (occurring for
11 no more than one month) but not for longer periods of time following training does
12 not present an apparent conflict between the VE’s testimony and the DOT that the
13 ALJ was required to reconcile. *Zavalin v. Colvin*, 778 F.3d 842, 846 (9th Cir.
14 2015). The ALJ found Plaintiff had a moderate limitation in interacting with
15 others, and gave some weight to expert testimony that Plaintiff was capable of
16 superficial contact with supervisors in the workplace away from the public. Tr.
17 1045 (citing Tr. 268-275), 1054 (citing Tr. 90-103, 105-120). The ALJ’s finding is
18 supported by substantial evidence.

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1 **E. Step Five**

2 Plaintiff challenged the ALJ’s assessment of Plaintiff’s age category at step
3 five. ECF No. 14 at 5.

4 At step five of the sequential evaluation process, an ALJ must consider a
5 claimant’s age as an increasingly limiting vocational factor. 20 C.F.R. §§
6 404.1563(b), 416.963(a). An ALJ “will not apply the age categories mechanically
7 in a borderline situation” where the claimant “is within a few days to a few months
8 of reaching an older age category, and using the older age category would result in
9 a determination or decision that [the claimant is] disabled.” *Id.* In such a case, the
10 ALJ is “not required to use an older age category” but is required only to consider
11 whether to use an older age category. *Lockwood*, 616 F.3d at 1070-71. An ALJ
12 properly considers the older age category by (1) mentioning the claimant’s date of
13 birth and age, (2) citing the appropriate regulations to indicate the ALJ knew of the
14 prohibition against mechanically applying age categories in a borderline situation,
15 and (3) evaluating the overall impact of the factors in the claimant’s case after
16 relying on VE testimony. *Id.* at 1071-72.

17 Plaintiff argues that this is a borderline age situation where Plaintiff was less
18 than two months away from turning 55 when the ALJ issued the denial in April
19 2021. ECF No. 14 at 5. First, the ALJ found that Plaintiff was 48 years old at the
20 time of disability onset, noting that she was in the younger individual age (18-49)

1 category and subsequently changed age categories to closely approaching advance
2 age. Tr. 1056. Second, the ALJ cited to the applicable regulations which
3 demonstrates awareness of not mechanically applying the categories in a
4 borderline situation. *Id.* (citing 20 C.F.R. §§ 404.1563, 416.963). Third, the ALJ
5 considered the overall impact of all the factor's in Plaintiff's case when relying on
6 the VE testimony before finding Plaintiff not disabled. *Id.* at 1056-57. The Court
7 finds the *Lockwood* factors are met and the ALJ accordingly did not err.

8 CONCLUSION

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

11 ACCORDINGLY, IT IS HEREBY ORDERED:

12 1. Plaintiff's Motion for Summary Judgment (ECF No. 14) is **DENIED**.

13 2. Defendant's Motion for Summary Judgment (ECF No. 15) is

14 **GRANTED**.

15 The District Court Executive is directed to enter this Order, enter judgment
16 accordingly, furnish copies to counsel, and **CLOSE** the file.

17 DATED April 11, 2022.



Thomas O. Rice
THOMAS O. RICE
United States District Judge