

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARJORIE MAUPIN,

Case No. 1:16-cv-00722-SKO

Plaintiff,

**ORDER ON PLAINTIFF'S SOCIAL
SECURITY COMPLAINT**

v.

(Doc. 1)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

On May 23, 2016, Plaintiff Marjorie Maupin ("Plaintiff") filed a complaint under 42 U.S.C. §§ 405(g) and 1383(c)(3) seeking judicial review of a final decision of the Commissioner of Social Security (the "Commissioner" or "Defendant") denying her applications for disability benefits and supplemental security income. (Doc. 1.) Plaintiff filed her opening brief ("Plaintiff's Motion") on May 22, 2017, (Doc. 20), and Defendant filed their Cross-Motion for Summary Judgment ("Defendant's Motion") on July 20, 2017, (Doc. 24). The matter is currently before the Court on the parties' briefs, which were submitted without oral argument.¹

For the reasons provided herein, the Court DENIES Plaintiff's Motion, (Doc. 20), GRANTS Defendant's Motion, (Doc. 24), and AFFIRMS the final decision of the Commissioner.

¹ The parties consented to the jurisdiction of a U.S. Magistrate Judge. (Docs. 8 & 9.)

I. BACKGROUND

The following includes the pertinent medical and procedural background for this matter. Plaintiff was born on March 1, 1974, and is currently 43 years old. (Administrative Record (“AR”) 269.)

On January 30, 2013, Plaintiff filed claims for disability insurance benefits and supplemental security income. (*See* AR 267–74.) In her claims, Plaintiff alleged that she became disabled on November 15, 2007. (AR 269.) Plaintiff stated that the following conditions limit her ability to work: (1) chronic pain in legs, (2) anxiety, (3) depression, (4) migraines, (5) hypertension, and (6) mood swings. (AR 135.)

A state agency physician, Dr. W. Jackson, reviewed Plaintiff’s medical record. (*See* AR 143–45.) In an opinion dated June 20, 2013, Dr. Jackson opined, in relevant part, that “[t]he evidence supports a [l]ight” residual functional capacity (“RFC”) “with . . . [h]azard precautions . . . , but also with the addition of some postural limitations due to . . . chronic back pain.” (AR 145.) In an opinion dated October 16, 2013, another state agency physician, Dr. E. Wong, concurred with Dr. Jackson’s assessment regarding Plaintiff’s limitations. (*See* AR 178–80.) Following these opinions, Plaintiff received medical care at Ceres Medical Office in Ceres, CA during portions of 2013 and 2014. (*See* AR 626–80.)

A state agency psychiatrist, Dr. D. Funkenstein, also reviewed Plaintiff’s medical record. (*See* AR 145–47.) In an opinion dated June 17, 2013, Dr. Funkenstein opined, in relevant part, that Plaintiff’s mental limitations were either moderately limited or not significantly limited. (*See* AR 146–47.) Dr. Funkenstein also opined that Plaintiff’s “attention [and] concentration [is] intact for unskilled work.” (AR 146.) In an opinion dated October 16, 2013, another state agency psychiatrist, Dr. A. Garcia, concurred with Dr. Funkenstein’s assessment regarding Plaintiff’s limitations. (*See* AR 194–95.)

A clinical psychologist, Dr. Robert Morgan, examined Plaintiff in 2014. (*See* AR 682.) Dr. Morgan performed a series of psychological tests on Plaintiff during this examination. (*See* AR 686–87.) In a Comprehensive Psychological Evaluation dated July 21, 2014, Dr. Morgan diagnosed Plaintiff with major depressive disorder and a cognitive disorder. (AR 687.)

1 Throughout his report—including in the sections regarding the “results of psychological
2 assessment” and the “diagnostic impression”—Dr. Morgan included statements regarding
3 Plaintiff’s subjective “reports.” (*See* AR 682–89.) Dr. Morgan ultimately provided the following
4 relevant opinion:

5
6 [Plaintiff] . . . present[ed] with a marked impairment in her ability to maintain her
activities of daily living.

7 . . .

8
9 In like manner [Plaintiff] . . . present[ed] with a marked impairment in her ability to
maintain her social functioning.

10 . . .

11
12 [Plaintiff] . . . present[ed] with a marked impairment in her concentration,
persistence and pace as noted on the mental status examination, psychological
13 testing and reported in history.

14 [Plaintiff’s] ability to perform activities within a clear schedule, maintain regular
attendance and be punctual within customary tolerances is markedly impaired.

15 [Plaintiff’s] ability to complete a normal work day and work week without
16 interruptions from psychologically-based symptoms and perform at a consistent
pace is markedly impaired.

17
18 [Plaintiff’s] ability to interact with coworkers and the public and to withstand the
stress of a routine work day and deal with various changes in the work setting is
19 markedly impaired.

20 The likelihood is high of [Plaintiff’s] emotional deterioration in a work like
21 environment.

22 [Plaintiff] is thought to have been disabled since the point in time that she initially
23 applied for disability.

24 (AR 688–89.) Dr. Morgan then stated in his report that he “affirm[ed] . . . that [his] findings
25 [were] based upon [his] objective assessment and not solely on [Plaintiff’s] subjective report.”
26 (AR 689.)

1 The Social Security Administration denied Plaintiff's claims initially on June 25, 2013,
2 (AR 201–10), and again on reconsideration on October 17, 2013, (AR 214–24). Plaintiff then
3 requested a hearing before an ALJ on December 12, 2013. (AR 225–26.)

4 On August 28, 2014, the ALJ held a hearing regarding Plaintiff's claims (the "Hearing").
5 (See AR 75–111.) Plaintiff was represented by counsel at this Hearing. (See AR 75.)

6 In a decision dated December 3, 2014, the ALJ found that Plaintiff is not disabled. (AR
7 20–43.) In the decision, the ALJ conducted the five-step sequential evaluation analysis set forth in
8 20 C.F.R. §§ 404.1520(a) and 416.920(a). (See AR 13–23.) At step one, the ALJ found that
9 Plaintiff "has not engaged in substantial gainful activity since November 15, 2007, the alleged
10 onset date." (AR 26.) At step two, the ALJ found that Plaintiff "has the following severe
11 impairments: disorder of the back, peripheral neuropathy, osteoarthritis, anxiety disorders and
12 affective disorders." (AR 26.) At step three, the ALJ determined that Plaintiff "does not have an
13 impairment or combination of impairments that meets or medically equals the severity of one of
14 the listed impairments in 20 [C.F.R.] Part 404, Subpart P, Appendix 1." (AR 28.)

15 The ALJ next found that Plaintiff has the RFC "to perform light work," with certain
16 limitations. (AR 30.) During the course of the RFC analysis, the ALJ accorded "significant
17 weight to the opinions of Dr. Jackson and Dr. Wong because their opinions were based on a
18 thorough review of [Plaintiff's] records and are consistent with the evidence as a whole." (AR
19 33.) However, "[g]iven the unremarkable objective medical findings," the ALJ gave "lesser
20 weight" to the "postural limitations" opined by Dr. Jackson and Dr. Wong "because they give too
21 [sic] credit to [Plaintiff's] subjective allegations." (AR 33.)

22 The ALJ further noted during the RFC analysis that Plaintiff "has a history of anxiety and
23 affective disorders," but responded positively to medications in 2012. (AR 32.) The ALJ then
24 provided the following pertinent discussion regarding Dr. Morgan's opinion:

25 The [ALJ] assigns little weight to Dr. Morgan's opinion for various reasons. First,
26 Dr. Morgan only examined [Plaintiff] once and his opinion was not based on a long
27 treatment history. Second, Dr. Morgan overly relied on [Plaintiff's] subjective
28 complaints and historical accounts. For example, [Plaintiff] informed Dr. Morgan
that she was "home all day," however [Plaintiff] admitted at the [H]earing that she
did go shopping in stores for groceries Further, [Plaintiff] informed Dr.

1 Morgan that she had no history of arrests or incarcerations as a juvenile or adult,
 2 which is inconsistent the statement [sic] made in her [a]pplication for
 3 [s]upplemental [s]ecurity [i]ncome [b]enefits that indicate that [Plaintiff] has been
 4 accused/convicted of a felony or an attempt to commit a felony Third, Dr.
 5 Morgan’s overly restrictive limitations are inconsistent with the objective medical
 6 evidence, which shows that [Plaintiff] has responded well to medications and no
 7 doctor has ordered IQ tests, computed tomography scans or magnetic resonance
 8 imaging studies to investigate [Plaintiff’s] allegations of memory loss and loss of an
 9 ability to read Fourth, Dr. Morgan’s opinion that [Plaintiff] was disabled since
 10 her alleged onset date touches upon subject matter reserved for the Commissioner . .
 11 . . This statement also suggests speculation and possible extrapolation from Dr.
 12 Morgan since there is no evidence that he was providing treatment of [Plaintiff] in
 13 or around her alleged onset date. Fifth, the evidence suggests that [Plaintiff]
 14 underwent an examination by Dr. Morgan not in an attempt to seek treatment for
 15 symptoms, but rather, through attorney referral and in connection with an effort to
 16 generate evidence for the current appeal. Although such evidence is certainly
 17 legitimate and deserves due consideration, the context in which it was produced
 18 cannot be ignored.

12 (AR 35–36.)

13 At step four, the ALJ found that Plaintiff “is unable to perform any past relevant work.”
 14 (AR 37.) Finally, at step five, the ALJ determined that “there are jobs that exist in significant
 15 numbers in the national economy that [Plaintiff] can perform.” (AR 38.) Ultimately, the ALJ
 16 found that Plaintiff “is not disabled under section 1614(a)(3)(A) of the Social Security Act.” (AR
 17 39.)

18 Plaintiff sought review of the ALJ’s decision before the Appeals Council. (AR 18–19.)
 19 On March 18, 2016, the Appeals Council denied Plaintiff’s request for review of the ALJ’s
 20 decision. (AR 1–6.)

21 Plaintiff then filed the Complaint in this Court on May 23, 2016. (Doc. 1.) Plaintiff filed
 22 Plaintiff’s Motion on May 22, 2017, (Doc. 20), and Defendant filed Defendant’s Motion on July
 23 20, 2017, (Doc. 24). To date, Plaintiff has not filed a reply in support of Plaintiff’s Motion. As
 24 such, the briefing in this case is complete and this matter is ready for disposition.

25 II. LEGAL STANDARD

26 A. Applicable Law

27 An individual is considered “disabled” for purposes of disability benefits if he or she is
 28 unable “to engage in any substantial gainful activity by reason of any medically determinable

1 physical or mental impairment which can be expected to result in death or which has lasted or can
 2 be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A).
 3 However, “[a]n individual shall be determined to be under a disability only if his physical or
 4 mental impairment or impairments are of such severity that he is not only unable to do his
 5 previous work but cannot, considering his age, education, and work experience, engage in any
 6 other kind of substantial gainful work which exists in the national economy.” *Id.* § 423(d)(2)(A).

7 “In determining whether an individual's physical or mental impairment or impairments are
 8 of a sufficient medical severity that such impairment or impairments could be the basis of
 9 eligibility [for disability benefits], the Commissioner” is required to “consider the combined effect
 10 of all of the individual's impairments without regard to whether any such impairment, if
 11 considered separately, would be of such severity.” *Id.* § 423(d)(2)(B). For purposes of this
 12 determination, “a ‘physical or mental impairment’ is an impairment that results from anatomical,
 13 physiological, or psychological abnormalities which are demonstrable by medically acceptable
 14 clinical and laboratory diagnostic techniques.” *Id.* § 423(d)(3).

15 “The Social Security Regulations set out a five-step sequential process for determining
 16 whether a claimant is disabled within the meaning of the Social Security Act.” *Tackett v. Apfel*,
 17 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 20 C.F.R. § 404.1520). The Ninth Circuit provided
 18 the following description of the sequential evaluation analysis:

19 In step one, the ALJ determines whether a claimant is currently engaged in
 20 substantial gainful activity. If so, the claimant is not disabled. If not, the ALJ
 21 proceeds to step two and evaluates whether the claimant has a medically severe
 22 impairment or combination of impairments. If not, the claimant is not disabled. If
 23 so, the ALJ proceeds to step three and considers whether the impairment or
 24 combination of impairments meets or equals a listed impairment under 20 C.F.R. pt.
 25 404, subpt. P, [a]pp. 1. If so, the claimant is automatically presumed disabled. If
 26 not, the ALJ proceeds to step four and assesses whether the claimant is capable of
 performing her past relevant work. If so, the claimant is not disabled. If not, the
 ALJ proceeds to step five and examines whether the claimant has the [RFC] . . . to
 perform any other substantial gainful activity in the national economy. If so, the
 claimant is not disabled. If not, the claimant is disabled.

27 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *see, e.g.*, 20 C.F.R. § 404.1520(a)(4)
 28 (providing the “five-step sequential evaluation process”); *id.* § 416.920(a)(4) (same). “If a

claimant is found to be ‘disabled’ or ‘not disabled’ at any step in the sequence, there is no need to consider subsequent steps.” *Tackett*, 180 F.3d at 1098 (citing 20 C.F.R. § 404.1520).

“The claimant carries the initial burden of proving a disability in steps one through four of the analysis.” *Burch*, 400 F.3d at 679 (citing *Swenson v. Sullivan*, 876 F.2d 683, 687 (9th Cir. 1989)). “However, if a claimant establishes an inability to continue her past work, the burden shifts to the Commissioner in step five to show that the claimant can perform other substantial gainful work.” *Id.* (citing *Swenson*, 876 F.2d at 687).

B. Scope of Review

“This court may set aside the Commissioner’s denial of disability insurance benefits [only] when the ALJ’s findings are based on legal error or are not supported by substantial evidence in the record as a whole.” *Tackett*, 180 F.3d at 1097 (citation omitted). “Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance.” *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001) (citing *Tackett*, 180 F.3d at 1098). “Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (citing *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

“This is a highly deferential standard of review” *Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). “The ALJ’s findings will be upheld if supported by inferences reasonably drawn from the record.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (citation omitted). Additionally, “[t]he court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational interpretation.” *Id.*; *see, e.g., Edlund*, 253 F.3d at 1156 (“If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner.” (citations omitted)).

Nonetheless, “the Commissioner’s decision ‘cannot be affirmed simply by isolating a specific quantum of supporting evidence.’” *Tackett*, 180 F.3d at 1098 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th Cir. 1998)). “Rather, a court must ‘consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner’s] conclusion.’” *Id.* (quoting *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993)).

Finally, courts “may not reverse an ALJ’s decision on account of an error that is harmless.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (citing *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055–56 (9th Cir. 2006)). Harmless error “exists when it is clear from the record that ‘the ALJ’s error was inconsequential to the ultimate nondisability determination.’” *Tommasetti*, 533 F.3d at 1038 (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir. 2006)). “[T]he burden of showing that an error is harmful normally falls upon the party attacking the agency’s determination.” *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (citations omitted).

III. DISCUSSION

Plaintiff argues that the ALJ erred (1) by failing to develop the record, and (2) during the RFC analysis by rejecting a portion of the opinion of an examining physician—Dr. Robert Morgan.² (See Doc. 20 at 13–19.) For the reasons that follow, the Court disagrees with Plaintiff’s positions.

A. Duty to Develop

Plaintiff first argues that the ALJ erred by not fully developing the record. (See Doc. 20 at 11–13.) The Court disagrees.

“[T]he ALJ is not a mere umpire at” a social security proceeding and “it is incumbent upon the ALJ to scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts.” *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir. 2003) (alteration in original) (quoting *Higbee v. Sullivan*, 975 F.2d 558, 561 (9th Cir. 1992)). Indeed, “[t]he ALJ in a social security case has an independent ‘duty to fully and fairly develop the record and to assure that the claimant’s interests are considered.’” *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir. 1996)). “This duty extends to the represented as well as to the unrepresented claimant.” *Id.* (citing *Smolen*, 80 F.3d at 1288).

² Plaintiff also appears to argue in her briefing that the ALJ’s RFC determination was deficient insofar as the ALJ relied on the opinions of non-examining physicians—namely, Dr. Jackson, Dr. Wong, Dr. Funkenstein, and Dr. Garcia—and, according to Plaintiff, opinions from such physicians cannot constitute substantial evidence. (See Doc. 20 at 7–11.) The Court disagrees with this argument. As noted by the Ninth Circuit, “[t]he opinions of . . . non-examining physicians may . . . serve as substantial evidence when the opinions are consistent with independent clinical findings or other evidence in the record.” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (citations omitted). Here, the ALJ explicitly stated in its decision that the ALJ accorded great weight to the opinions of the non-examining physicians because they were “consistent with the record as a whole.” (AR 33–34.) Plaintiff does not contest this finding. (See Doc. 20 at 8–11.) Consequently, her argument fails. See *Thomas*, 278 F.3d at 957.

1 “Ambiguous evidence, or the ALJ’s own finding that the record is inadequate to allow for
 2 proper evaluation of the evidence, triggers the ALJ’s duty to ‘conduct an appropriate inquiry.’”
 3 *Id.* (quoting *Smolen*, 80 F.3d at 1288); *see, e.g., Mayes v. Massanari*, 276 F.3d 453, 459–60 (9th
 4 Cir. 2001) (“An ALJ’s duty to develop the record further is triggered only when there is
 5 ambiguous evidence or when the record is inadequate to allow for proper evaluation of the
 6 evidence.” (citation omitted)); *see also Reed v. Massanari*, 270 F.3d 838, 842 (9th Cir. 2001)
 7 (“Some kinds of cases . . . do normally require a consultative examination, including those in
 8 which additional evidence needed is not contained in the records of the claimant’s medical
 9 sources, and those involving an ambiguity or insufficiency in the evidence that must be resolved.”
 10 (alterations omitted) (citations omitted)). “A specific finding of ambiguity or inadequacy is not
 11 necessary to trigger this duty to inquire, where the record establishes ambiguity or inadequacy.”
 12 *McLeod v. Astrue*, 640 F.3d 881, 885 (9th Cir. 2011) (citation omitted). “The ALJ may discharge
 13 this duty in several ways, including: subpoenaing the claimant’s physicians, submitting questions
 14 to the claimant’s physicians, continuing the hearing, or keeping the record open after the hearing
 15 to allow supplementation of the record.” *Tonapetyan*, 242 F.3d at 1150 (citing *Tidwell v. Apfel*,
 16 161 F.3d 599, 602 (9th Cir. 1998) and *Smolen*, 80 F.3d at 1288).

17 Plaintiff does not argue that the ALJ’s duty to develop the record was triggered by
 18 ambiguous evidence in the record. (*See* Doc. 20 at 11–13.) Instead, Plaintiff appears to argue that
 19 the record was inadequate because the opinions provided by Dr. Jackson and Dr. Wong “were
 20 over a year old” and did not take into account the subsequent medical records from the Ceres
 21 Medical Office,³ (*id.* at 12), and specifically as these records pertained to “Plaintiff’s back
 22 impairment,” (*id.* at 19). As such, according to Plaintiff, the ALJ should have sought additional
 23 “clarification from a medical source regarding Plaintiff’s . . . limitations.” (*Id.*)

26 ³ Plaintiff also argues that the ALJ erred by relying on the opinions of Dr. Funkenstein and Dr. Garcia, as these
 27 psychiatrists provided their opinions prior to Dr. Morgan releasing his report. (*See* Doc. 20 at 9–11.) As Plaintiff
 28 argues that an updated opinion that incorporated Dr. Morgan’s test results would have yielded a different opinion, (*see*
id.), the Court construes this argument as asserting that the ALJ erred in according more weight to the opinions of Dr.
 Funkenstein and Dr. Garcia—which omitted Dr. Morgan’s test results—than the opinion of Dr. Morgan—which
 included these test results. The Court extensively analyzes this issue below.

1 The Court is not persuaded by Plaintiff's position. Plaintiff does not argue that the results
 2 from the Ceres Medical Office demonstrated any change to the status of Plaintiff's physical
 3 limitations. (*See* Doc. 20 at 8.) To the contrary, as discussed by the ALJ in its decision, these
 4 results were consistent with the prior "objective medical findings" in being "unremarkable." (AR
 5 33; *see also* AR 626–80 (constituting the results from the Ceres Medical Office).) Simply put, an
 6 additional opinion regarding the Ceres Medical Office results would have no additional probative
 7 value, as these results did not materially conflict with the prior medical evidence regarding
 8 Plaintiff's physical limitations. It is thus not surprising that Plaintiff, herself, stated at the Hearing
 9 that the "record [was] complete" with the inclusion of the results from the Ceres Medical Office.
 10 (*See* AR 78.)

11 For these reasons, the Court finds that the record was not inadequate due to the omission of
 12 a more recent medical opinion that addressed the results from the Ceres Medical Office. Absent
 13 an inadequate record, the Court finds that the ALJ did not err by failing to develop the record.
 14 *See, e.g., McLeod*, 640 F.3d at 885 (noting that the ALJ's "duty to inquire" is "trigger[ed]" where
 15 "the record establishes ambiguity or inadequacy").

16 **B. Weight Accorded to an Examining Physician**

17 Plaintiff next argues that the ALJ erred by rejecting a portion of the opinion of an
 18 examining physician—Dr. Morgan. (*See* Doc. 20 at 13–19.) The Court again disagrees.

19 1. Overview of Analysis

20 "The ALJ determines a claimant's RFC before step four of the sequential evaluation
 21 analysis." *Colston v. Comm'r of Soc. Sec.*, Case No. 1:15-cv-01750-SKO, 2017 WL 784870, at *5
 22 (E.D. Cal. Feb. 28, 2017) (citing 20 C.F.R. §§ 404.1520(e) & 416.920(e)). A claimant's RFC "is
 23 the most [the claimant] can still do despite [their] limitations." 20 C.F.R. §§ 404.1545(a)(1) &
 24 416.945(a)(1). "In determining a claimant's RFC, an ALJ must consider all relevant evidence in
 25 the record" *Robbins*, 466 F.3d at 883. "The ALJ is entitled to formulate an RFC and resolve
 26 any ambiguity or inconsistency in the medical evidence" *Jenkins v. Colvin*, Case No. 1:15-
 27 cv-01135-SKO, 2016 WL 4126707, at *6 (E.D. Cal. Aug. 2, 2016) (citing *Lewis v. Apfel*, 236 F.3d
 28 503, 509 (9th Cir. 2001)). Additionally, "[t]he ALJ can . . . decide what weight to give to what

evidence as long as the ALJ's reasoning is free of legal error and is based on substantial evidence." *Tremayne v. Astrue*, No. CIV 08–2795 EFB, 2010 WL 1266850, at *12 (E.D. Cal. Mar. 29, 2010) (citing *Reddick v. Chater*, 157 F.3d 715 (9th Cir. 1998)).

"In disability benefits cases such as this, physicians may render medical, clinical opinions, or they may render opinions on the ultimate issue of disability—the claimant's ability to perform work." *Reddick*, 157 F.3d at 725. Courts "distinguish among the opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant (nonexamining [or reviewing] physicians)." *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). "Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's." *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001) (citations omitted); *see also Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007) ("By rule, the Social Security Administration favors the opinion of a treating physician over non-treating physicians." (citing 20 C.F.R. § 404.1527)). The opinions of treating physicians "are given greater weight than the opinions of other physicians" because "treating physicians are employed to cure and thus have a greater opportunity to know and observe the patient as an individual." *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996) (citations omitted).

Here, it is uncontested that Dr. Morgan was Plaintiff's examining physician. (*See, e.g.*, AR 34.) "As in the case with the opinion of a treating physician, the Commissioner must provide clear and convincing reasons for rejecting the uncontradicted opinion of an examining physician." *Lester*, 81 F.3d at 830 (citation omitted). "And like the opinion of a treating doctor, the opinion of an examining doctor, even if contradicted by another doctor, can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record." *Id.* at 830–31 (citation omitted). Nonetheless, "[t]he ALJ need not accept the opinion of any physician . . . if that opinion is brief, conclusory, and inadequately supported by clinical findings." *Chaudhry v. Astrue*, 688 F.3d 661, 671 (9th Cir. 2012) (quoting *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009)).

2. The ALJ Did Not Err in Weighing the Opinion of Dr. Morgan

In this case, Dr. Morgan opined that Plaintiff suffered from numerous mental impairments and diagnosed Plaintiff with major depressive disorder and a cognitive disorder. (See AR 687–88.) Dr. Morgan also opined that Plaintiff had “marked” impairments in her (1) “ability to maintain her social functioning,” (2) “concentration, persistence and pace,” (3) “ability to perform activities within a clear schedule,” “maintain regular attendance,” and “be punctual within customary tolerances,” and (4) “ability to complete a normal work day and work week without interruptions from psychologically-based symptoms.” (AR 688–89.) This opinion was contradicted by the opinions of two non-examining physicians, Dr. Funkenstein and Dr. Garcia, who opined that Plaintiff’s abilities were only moderately limited by her mental limitations and that her attention and concentration were “intact for unskilled work.” (AR 146–47, 194–95.)

As the opinion of Dr. Morgan is contradicted by the opinions of non-examining physicians, the ALJ can only reject Dr. Morgan’s opinion “for specific and legitimate reasons that are supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830–31 (citation omitted). The ALJ accorded “little weight” to Dr. Morgan’s opinion for the following reasons: (1) “Dr. Morgan only examined [Plaintiff] once and his opinion was not based on a long treatment history,” (2) “Dr. Morgan overly relied on [Plaintiff’s] subjective complaints and historical accounts,” (3) “Dr. Morgan’s opinion that [Plaintiff] was disabled since her alleged onset date touches upon subject matter reserved for the Commissioner” and “suggests speculation and possible extrapolation,” (4) “the evidence suggests that [Plaintiff] underwent an examination by Dr. Morgan . . . through attorney referral and in connection with an effort to generate evidence for the current appeal,” and (5) Dr. Morgan’s opinion regarding Plaintiff’s mental limitations is “inconsistent with the objective medical evidence, which shows that [Plaintiff] has responded well to medications and no doctor has ordered” pertinent testing. (AR 35–36.)

The ALJ’s first rationale—Dr. Morgan only examined Plaintiff once—is clearly deficient. It is uncontested that Dr. Morgan was Plaintiff’s examining physician, rather than a treating physician. (See, e.g., AR 34.) Nonetheless, the ALJ must provide specific and legitimate reasons to accord less weight to the opinion of this examining physician, even if he was not a treating

1 physician. *See, e.g., Lester*, 81 F.3d at 830–31. The ALJ’s first rationale does not constitute such
2 a reason. Instead, this rationale merely states that Dr. Morgan was an examining physician and
3 does not otherwise provide any basis to discount this opinion. (*See* AR 34.) *See generally Lester*,
4 81 F.3d at 830 (describing “examining physicians” as “those who examine but do not treat the
5 claimant”). The Court therefore finds that this rationale is not a valid specific and legitimate
6 reason to reject Dr. Morgan’s opinion.

7 Turning next to the ALJ’s third stated basis for rejecting this opinion—Dr. Morgan opined
8 that Plaintiff was disabled—this rationale is also deficient. Of course, the ALJ was correct that the
9 ultimate disability determination lies with the Commissioner. *See, e.g., McLeod v. Astrue*, 640
10 F.3d 881, 885 (9th Cir. 2011) (“The law reserves the disability determination to the
11 Commissioner.” (citing 20 C.F.R. § 404.1527(e)(1))). However, as discussed above, Dr.
12 Morgan’s opinion extended well beyond the ultimate disability determination. (*See* AR 681–92.)
13 This rationale bears no relationship to the remainder of Dr. Morgan’s opinion regarding Plaintiff’s
14 mental limitations, or the impact of those limitations on Plaintiff’s ability to handle work
15 requirements. The Court therefore finds that this rationale is not a valid specific and legitimate
16 reason to reject Dr. Morgan’s opinion.

17 The ALJ’s fourth stated rationale—Plaintiff underwent the examination with Dr. Morgan
18 to generate evidence for the disability proceedings—is also deficient. While Plaintiff may have
19 visited with Dr. Morgan in preparation for the disability proceedings, this fact has no bearing on
20 Dr. Morgan’s evaluation and findings. *See, e.g., Lester*, 81 F.3d at 832 (“An examining doctor’s
21 findings are entitled to no less weight when the examination is procured by the claimant than
22 when it is obtained by the Commissioner.” (citation omitted)). Nonetheless, it appears that the
23 ALJ imputed Plaintiff’s potential motivations to Dr. Morgan. (*See* AR 35–36.) However, the ALJ
24 cites to no evidence impugning Dr. Morgan’s motivations in creating his opinion. (*See* AR 20–
25 43); *cf. Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996) (“[T]he source of a referral [is]
26 relevant where there is no objective medical basis for the opinion, and where there is evidence of
27 actual improprieties on the part of the doctor whose report the ALJ chooses to reject.” (citations
28 omitted)). The Court therefore finds that this is not a valid specific and legitimate reason to reject

1 Dr. Morgan's opinion. *See, e.g., Barraza v. Colvin*, No. 2:13-cv-0430 JAM DAD, 2014 WL
2 651909, at *4 (E.D. Cal. Feb. 19, 2014) ("[I]t was recognized long ago that '[t]he purpose for
3 which medical reports are obtained does not provide a legitimate basis for rejecting them.'"
4 (second alteration in original) (quoting *Lester*, 81 F.3d at 832)).

5 The ALJ's fifth stated rationale—inconsistency with objective medical evidence—is not a
6 valid basis to reject Dr. Morgan's opinion. In support of this rationale, the ALJ stated that (1) no
7 other doctor ordered testing associated with the mental limitations opined by Dr. Morgan, and (2)
8 Plaintiff positively responded to medication in the past. (AR 35.) On the issue of testing, the only
9 pertinent testing regarding Plaintiff's mental health limitations was performed by Dr. Morgan.
10 The ALJ fails to cite to—and the Court is not otherwise aware of—any affirmative evidence in the
11 record that contradicts these test results. (*See* AR 20–43.) As such, contrary to the ALJ's
12 statement, Dr. Morgan's opinion is not contradicted by the objective medical evidence because it
13 is the *only* pertinent evidence in the record.

14 Regarding Plaintiff's response to the medications, Dr. Morgan provided his opinion
15 roughly two years after Plaintiff responded positively to medication. (*See, e.g.,* AR 32, 34–35.)
16 The ALJ fails to reference—and the Court is not otherwise aware of—any evidence that Plaintiff
17 again responded positively to medication at the time or after Dr. Morgan rendered his opinion.
18 (*See* AR 20–43.) Consequently, Plaintiff's previous response to medication has little probative
19 value and does not constitute objective medical evidence that conflicts with the subsequent
20 opinion provided by Dr. Morgan. *See, e.g., Deloney v. Astrue*, No. 2:10-cv-2687 DAD, 2013 WL
21 618213, at *5 (E.D. Cal. Feb. 19, 2013) (finding that the ALJ failed to provide a specific and
22 legitimate reason for rejecting the opinion of a physician where the ALJ discounted the opinion
23 based on previous evidence in the record). *See generally Quinn v. Astrue*, No. 2:10-cv-2170
24 DAD, 2013 WL 552522, at *6 (E.D. Cal. Feb. 13, 2013) ("[T]he Ninth Circuit has found that
25 medical reports that are most recent are more highly probative." (citing *Osenbrock v. Apfel*, 240
26 F.3d 1157, 1165 (9th Cir. 2001))).

27 Thus, the ALJ provided four deficient reasons for discounting the opinion of Dr. Morgan.
28 Nonetheless, the ALJ did provide a valid specific and legitimate reason for discounting this

1 opinion. Specifically, the ALJ's second rationale—that Dr. Morgan based his opinion on
 2 Plaintiff's subjective statements—is a valid reason to accord this opinion little weight. In its
 3 decision, the ALJ determined that Plaintiff's statements regarding her impairments were not
 4 credible, (*see* AR 36), and that her “alleged limitations are so extreme as to suggest exaggeration,”
 5 (AR 35). Plaintiff does not contest the ALJ's credibility determination regarding Plaintiff's
 6 statements as to her limitations. (*See* Doc. 20).

7 Additionally, as noted by the ALJ, Plaintiff's subjective complaints are pervasively
 8 discussed throughout Dr. Morgan's opinion. (*See* AR 682–89.) For example, Dr. Morgan
 9 consistently and extensively discusses Plaintiff's subjective complaints—including Plaintiff's self-
 10 assessment regarding her functioning capacity in numerous areas—when describing the basis for
 11 his “diagnostic impression” of Plaintiff. (*See* AR 687–89.) These pervasive references to
 12 Plaintiff's subjective statements demonstrate that Dr. Morgan “overly relied” on Plaintiff's non-
 13 credible subjective complaints.⁴ This is a valid specific and legitimate reason to reject Dr.
 14 Morgan's opinion. *See, e.g., Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1223 (9th Cir. 2010)
 15 (finding that “the ALJ reasonably rejected” the opinion of a physician where the physician's
 16 “opinion was based almost entirely on the claimant's self-reporting”); *Tommasetti v. Astrue*, 533
 17 F.3d 1035, 1041 (9th Cir. 2008) (“An ALJ may reject a . . . physician's opinion if it is based to a
 18 large extent on a claimant's self-reports that have been properly discounted as incredible.”
 19 (citation omitted)); *Roberts v. Colvin*, No. 1:13-cv-01614-GSA, 2015 WL 859623, at *8 (E.D.
 20 Cal. Feb. 27, 2015) (“Given the ALJ's unchallenged finding that [the plaintiff] lacked credibility,
 21 it was reasonable for the ALJ to reject a medical opinion based primarily on her statements.”
 22 (citation omitted)).

24 ⁴ In her briefing, Plaintiff contests the ALJ's finding that Dr. Morgan overly relied on Plaintiff's subjective
 25 complaints when creating his report. (*See* Doc. 20 at 16–17.) In other words, Plaintiff contests the ALJ's
 interpretation of Dr. Morgan's report. (*See id.*)

26 Contrary to Plaintiff's argument, Dr. Morgan's report is readily susceptible to the ALJ's interpretation.
 27 Specifically, Dr. Morgan's pervasive references to Plaintiff's subjective complaints clearly indicate that Dr. Morgan
 28 overly relied on Plaintiff's statements. (*See* AR 682–89). The Court therefore finds that the ALJ's interpretation on
 this issue was reasonable and, consequently, the Court shall defer to the ALJ's interpretation. *Molina v. Astrue*, 674
 F.3d 1104, 1111 (9th Cir. 2012) (“Even when the evidence is susceptible to more than one rational interpretation,
 [courts] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record.”
 (citation omitted)).

1 In summary, the ALJ's second stated rationale constitutes a valid specific and legitimate
2 reason for rejecting the opinion of Dr. Morgan. While the ALJ erred in providing additional
3 invalid reasons for rejecting Dr. Morgan's opinion, that error was inconsequential to the ultimate
4 disability determination. In other words, as the ALJ provided a valid specific and legitimate
5 reason for discounting Dr. Morgan's opinion, the ALJ's error relating to the other invalid stated
6 reasons was harmless. *See, e.g., Tommasetti*, 533 F.3d at 1038 (noting that harmless error "exists
7 when it is clear from the record that 'the ALJ's error was inconsequential to the ultimate
8 nondisability determination'" (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir.
9 2006))). Consequently, remand is not warranted on this issue. *See, e.g., Molina v. Astrue*, 674
10 F.3d 1104, 1111 (9th Cir. 2012) (stating that courts "may not reverse an ALJ's decision on
11 account of an error that is harmless" (citing *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050,
12 1055–56 (9th Cir. 2006))).

13 IV. CONCLUSION

14 For the reasons provided above, the Court DENIES Plaintiff's Motion, (Doc. 20),
15 GRANTS Defendant's Motion, (Doc. 24), and AFFIRMS the final decision of the Commissioner.
16 The Court DIRECTS the Clerk to enter judgment in favor of Defendant.

17
18 IT IS SO ORDERED.

19 Dated: September 27, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE