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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
|------------------------------------|---|---------------------------|
| MARIA DE LA CRUZ YANES, |) | NO. CV 11-9069-E |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM OPINION |
| |) | |
| MICHAEL J. ASTRUE, COMMISSIONER |) | |
| OF SOCIAL SECURITY ADMINISTRATION, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

PROCEEDINGS

Plaintiff filed a Complaint on November 1, 2011, seeking review of the Commissioner’s denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on February 3, 2012.

Plaintiff filed a motion for summary judgment on April 23, 2012. Defendant filed a cross-motion for summary judgment on May 23, 2012. The Court has taken both motions under submission without oral argument. See L.R. 7-15; “Order,” filed November 4, 2011.

1 **BACKGROUND**

2
3 Plaintiff, a former single needle sewing machine operator,
4 asserted disability since February 27, 2007, based primarily on
5 alleged "T.K.R. [total knee replacement], lower back, hip, legs,
6 knees, and heels pain, chondromalacia grade 4, fatigue, [and]
7 osteoarthritis on right knee" (Administrative Record ("A.R.") 52, 141-
8 47, 161, 173). The Administrative Law Judge ("ALJ") examined the
9 medical record and heard testimony from Plaintiff and a vocational
10 expert (A.R. 12-210, 217-703).

11
12 The ALJ found that Plaintiff suffers from severe "degenerative
13 disc disease of the lumbar spine, diabetic neuropathy, and
14 osteoarthritis of the right knee," but retains the residual functional
15 capacity to perform "the full range of light work" (A.R. 14-20).¹ The
16 ALJ found not credible Plaintiff's testimony regarding the alleged
17 severity of her physical problems (A.R. 16-19). The ALJ also found
18 that a person having the capacity to perform the full range of light
19 work could perform Plaintiff's past relevant work as a single needle

20
21 ¹ Light work involves lifting no more than 20
22 pounds at a time with frequent lifting or
23 carrying of objects weighing up to 10 pounds.
24 Even though the weight lifted may be very
25 little, a job is in this category when it
26 requires a good deal of walking or standing,
27 or when it involves sitting most of the time
28 with some pushing and pulling of arm or leg
controls. To be considered capable of
performing a full or wide range of light
work, you must have the ability to do
substantially all of these activities.

20 C.F.R. § 416.967(b) (emphasis added).

1 sewing machine operator, as that work is generally performed (A.R. 20
2 (adopting vocational expert testimony at A.R. 43 (describing
3 exertional requirements for the job as "light"))). Accordingly, the
4 ALJ denied disability benefits (A.R. 12, 20-21). The Appeals Council
5 denied review (A.R. 1-3).

6
7 Plaintiff argues that the ALJ: (1) erred in rejecting the opinion
8 of Plaintiff's treating rheumatologist; (2) erred in discounting
9 Plaintiff's credibility; and (3) lacked substantial evidence to
10 support the finding that Plaintiff can perform her past relevant work
11 See Plaintiff's Motion, pp. 3-10.

12 13 **STANDARD OF REVIEW**

14
15 Under 42 U.S.C. section 405(g), this Court reviews the
16 Administration's decision to determine if: (1) the Administration's
17 findings are supported by substantial evidence; and (2) the
18 Administration used correct legal standards. See Carmickle v.
19 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
20 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such
21 relevant evidence as a reasonable mind might accept as adequate to
22 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401
23 (1971) (citation and quotations omitted); see also Widmark v.
24 Barnhart, 454 F.3d 1063, 1067 (9th Cir. 2006).

25
26 This Court "may not affirm [the Administration's] decision simply
27 by isolating a specific quantum of supporting evidence, but must also
28 consider evidence that detracts from [the Administration's]

1 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)
2 (citation and quotations omitted); see Lingenfelter v. Astrue, 504
3 F.3d 1028 (9th Cir. 2007) (same). However, the Court cannot disturb
4 findings supported by substantial evidence, even though there may
5 exist other evidence supporting Plaintiff's claim. See Torske v.
6 Richardson, 484 F.2d 59, 60 (9th Cir. 1973), cert. denied, 417 U.S.
7 933 (1974); Harvey v. Richardson, 451 F.2d 589, 590 (9th Cir. 1971).

8 9 DISCUSSION

10
11 After consideration of the record as a whole, Defendant's motion
12 is granted and Plaintiff's motion is denied. The Administration's
13 findings are supported by substantial evidence and are free from
14 material² legal error. Plaintiff's contrary contentions are
15 unavailing.

16 17 I. Substantial Evidence Supports the Conclusion Plaintiff Can Work.

18
19 Substantial medical and vocational evidence supports the ALJ's
20 conclusion that Plaintiff is not disabled. The ALJ properly relied on
21 this evidence to deny disability benefits.

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25 A. Summary of the Medical Record

26
27 ² The harmless error rule applies to the review of
28 administrative decisions regarding disability. See McLeod v.
Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,
400 F.3d 676, 679 (9th Cir. 2005).

1 Plaintiff's primary care physician, Dr. Gary Brown, treated
2 Plaintiff since 1996 for hypertension, high cholesterol, diabetes
3 mellitus, and degenerative joint disease in Plaintiff's knees. See
4 A.R. 259-68, 271-78, 283, 290-93, 296-308, 311-66, 557-58, 606-07
5 (treatment notes). Lab work for Plaintiff showed high triglycerides,
6 high glucose, and some high cholesterol readings (A.R. 367-74, 378-86,
7 389-90, 393-94, 398-415, 420-23, 425-27, 429, 436, 438-39, 441-45,
8 450). A treatment note from March 2006 indicates Plaintiff's blood
9 sugar is "controlled when checked at home" (A.R. 298).

10
11 On March 19, 2007, Plaintiff reportedly told Dr. Brown that
12 Plaintiff thought she needed to be disabled (A.R. 283). Dr. Brown
13 observed Plaintiff using a cane on August 21, 2008, when Plaintiff
14 asked the doctor to fill out disability forms (A.R. 259). On
15 January 30 and May 28, 2009, Dr. Brown noted that Plaintiff continued
16 to believe she is disabled (A.R. 557, 606). Dr. Brown never opined
17 that Plaintiff is disabled.

18
19 Dr. Brown referred Plaintiff to rheumatologist Dr. Thomas Romano
20 in 2006 for an evaluation of Plaintiff's right knee pain (A.R. 295).
21 Dr. Romano had seen Plaintiff for her right knee in 2004, and had
22 diagnosed osteoarthritis (A.R. 295; see also A.R. 309-10 (earlier
23 treatment records); A.R. 463 (x-ray report from 2004 showing mild
24 degenerative changes to the right knee)). Plaintiff reported to Dr.
25 Romano on June 29, 2006, that Plaintiff had fallen seven or eight
26 weeks ago and had been experiencing increased pain and swelling in her
27 right knee (A.R. 295). Dr. Romano once again diagnosed osteoarthritis
28 in the right knee (id.). Dr. Romano recommended physical therapy,

1 corticosteroid injections, and daily medication (Orudis). (Id.). Dr.
2 Romano gave Plaintiff injections on August 8, 2006, February 14, 2007,
3 March 1, 2007, and March 8, 2007 (A.R. 287-89, 294).

4
5 On January 30, 2008, orthopaedic surgeon Dr. Luigi Galloni
6 performed arthroscopic surgery on Plaintiff's right knee to treat
7 Plaintiff's osteoarthritis, chondromalacia Grade IV medial femoral
8 condyle and medial tibial plateau, and a tear of the medial meniscus
9 (A.R. 221-23).³ After the surgery, Dr. Galloni started Plaintiff on
10 physical therapy (A.R. 220). On March 24, 2008, Dr. Galloni reported
11 that Plaintiff had not been improving since the surgery and that
12 nothing more could be done, except Plaintiff should continue with
13 exercises and physical therapy (A.R. 219). Dr. Galloni indicated that
14 Plaintiff eventually would require a total knee arthroplasty, but that
15 Plaintiff was overweight and too young for a total knee replacement

16
17

18 ³ On initial examination in July 2007, Dr. Galloni
19 reported that Plaintiff had decreased range of motion in the
20 right knee with tenderness to palpation of the medial and lateral
21 joint line and some crepitus at range of motion (A.R. 230). X-
22 rays showed a collapse of the medial compartment of the right
23 knee, and an MRI showed a tear to the medial meniscus of the
24 right knee with degeneration of the cartilage of the medial
25 compartment (A.R. 231; see also A.R. 458-59 (MRI report from June
26 12, 2007)). Dr. Galloni diagnosed osteoarthritis of the right
27 knee and indicated that Plaintiff may be in need of a right knee
28 replacement (A.R. 231).

24 An MRI of Plaintiff's lumbosacral spine dated December 4,
25 2007, showed mild-to-moderate hypertrophy of the facet joints,
26 which Dr. Galloni opined "does not seem to be the situation that
27 is causing the patient such problems" (A.R. 225-27, 231).
28 Earlier x-rays of the lumbar spine dated February 14 and
August 20, 2007, showed only evidence of "spasm" and a normal
lumbar spine, respectively (A.R. 229, 457).

1 (A.R. 219). By May 5, 2008, Dr. Galloni reported "some minimal
2 improvement" by Plaintiff post-surgery (A.R. 218). Plaintiff was to
3 continue with her exercises (A.R. 218). By August 4, 2008, Dr.
4 Galloni reported that Plaintiff "eventually" had some improvement with
5 the arthroscopy, but was still having "some problems and pain" (A.R.
6 217).

7
8 Plaintiff underwent consultative examinations, which found no
9 disabling impairments. Consultative examiner Dr. A. Rahman Khaledy
10 Sultan prepared a Complete Internal Medicine Evaluation of Plaintiff
11 dated December 2, 2008 (A.R. 520-25). Plaintiff reported a history of
12 back pain, high blood pressure, diabetes, high cholesterol, and right
13 knee pain, and Plaintiff also reported her January 2008 knee surgery
14 (A.R. 520-21). Dr. Sultan stated that Plaintiff drove herself to the
15 office, and the doctor observed that Plaintiff had no difficulty
16 getting into and out of a chair (A.R. 520-21).

17
18 On examination, Dr. Sultan found moderate limitation of back
19 movement, with "no loss of lordosis," "no paralumbar muscle spasm,"
20 "no tenderness to palpation," and negative straight leg raising tests
21 (A.R. 523). Dr. Sultan also found Plaintiff's right knee had
22 osteoarthritis, but range of motion was intact (A.R. 524). Dr. Sultan
23 noted no other issues (A.R. 520-24). Dr. Sultan ordered lumbar spine
24 and right knee x-rays, which revealed mild disc degeneration at

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1 the L2-L3 vertebrae and generalized osteopenia,⁴ and mild to moderate
2 osteoarthritis in the right knee (A.R. 524, 526).

3
4 Dr. Sultan opined that Plaintiff could perform medium work, i.e.,
5 she could lift and carry 50 pounds occasionally, 25 pounds frequently,
6 could stand or walk six hours in an eight-hour day, and could sit for
7 six hours in an eight-hour day with normal breaks (A.R. 525). Dr.
8 Sultan imposed no postural, manipulative, visual, communicative or
9 environmental limitations (A.R. 525). Dr. Sultan stated that
10 Plaintiff would not need a cane for short distances, but Plaintiff
11 told Dr. Sultan she uses a cane for long distances (A.R. 525).

12
13 Consultative psychologist Rosa Colonna examined Plaintiff and
14 prepared a Psychological Evaluation of Plaintiff dated January 7, 2009
15 (A.R. 529-33). Dr. Colonna observed that Plaintiff was
16 overweight/obese, and ambulated with a cane (A.R. 529, 533). On
17 examination, Plaintiff's intellectual functioning fell in the
18 borderline to low-average range (A.R. 531-32). Dr. Colonna assigned

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27 ⁴ Osteopenia is a reduction in bone volume to below
28 normal levels. See Medline Plus Medical dictionary entry for
"osteopenia," available online at [www.merriam-webster.com/
medlineplus/osteopenia](http://www.merriam-webster.com/medlineplus/osteopenia) (last visited July 5, 2012).

1 plaintiff a GAF score of 65.⁵ Dr. Colonna opined that Plaintiff would
2 be able to understand, remember, and carry out short and simplistic
3 instructions without difficulty. She would have a mild inability to
4 understand, remember, and carry out detailed instructions. Plaintiff
5 could make simplistic work-related decisions without special
6 supervision. Dr. Colonna found no other limitations. See A.R. 533.

7
8 Plaintiff thereafter returned to Dr. Romano with complaints of
9 bilateral knee pain (A.R. 596, 598, 603, 608, 611). Dr. Romano
10 examined Plaintiff on March 9, 2009, and found marked crepitus and
11 decreased range of motion in the right knee, a fairly normal range of
12 motion in the left knee, and some discomfort in Plaintiff's right heel
13 (A.R. 611). Dr. Romano opined that Plaintiff has severe
14 osteoarthritis in her right knee and probable Achilles tendinitis in
15 her right heel (A.R. 611).⁶ Dr. Romano stated that Plaintiff's
16 arthroscopic surgery did not help Plaintiff's right knee, nor did
17 treatment with multiple NSAIDS, physical therapy, injections of
18 corticosteroids and injections of Euflexxa (A.R. 611). Dr. Romano
19 agreed with Dr. Galloni that Plaintiff was too young for a right total

20
21 ⁵ Clinicians use the GAF scale to report an individual's
22 overall level of functioning. "A GAF of 61-70 indicates 'some
23 mild symptoms (e.g., depressed mood and mild insomnia) or some
24 difficulty in social, occupational, or school functioning (e.g.,
25 occasional truancy, or theft within the household), but generally
26 functioning pretty well, has some meaningful interpersonal
relationships.'" Siegel v. Astrue, 2009 WL 2365693, at *6 n.6
(E.D. Cal. July 31, 2009) (quoting from American Psychiatric
Association, Diagnostic and Statistical Manual of Mental
Disorders 32 (4th Ed. 1994)).

27 ⁶ A week later, podiatrist Dr. Stanley Mathis diagnosed
28 tendinitis (A.R. 610). Dr. Mathis prescribed physical therapy
and heel lifts for both of Plaintiff's feet (A.R. 610).

1 knee replacement (A.R. 611). Dr. Romano prescribed Lyrica, a Flector
2 Patch, and additional Euflexxa injections (A.R. 611). Dr. Romano
3 injected Plaintiff's right knee with Euflexxa on April 23 and May 7,
4 2009, and her left knee with Euflexxa on July 10, 20, and 27, 2009
5 (A.R. 603-05, 608-09).

6
7 On September 23, 2009, Plaintiff reported that her right heel was
8 swollen with pain, but that Euflexxa injections had helped her left
9 knee (A.R. 598). Dr. Romano noted right patellar tendinitis helped by
10 a patch (A.R. 598). On January 26, 2010, Plaintiff reported that the
11 injections had helped, she was happy with Celebrex, and she did not
12 need additional injections at that time (A.R. 596). Plaintiff
13 reported worse pain when bending her knees for an extended time and
14 pain moving up her leg when walking, however (A.R. 596).

15
16 **B. Analysis**

17
18 In determining that Plaintiff retains the residual functional
19 capacity to perform the full range of light work, the ALJ gave weight
20 to Dr. Sultan's internal medicine evaluation, but ultimately assigned
21 Plaintiff a more restrictive capacity than Dr. Sultan found to exist.
22 See A.R. 16, 19 ("The undersigned gives significant weight to the
23 above opinions; however, notes that the residual functional capacity
24 finding contained herein is more restrictive than any other opinion
25 throughout the record."). The ALJ stated, "the undersigned finds in
26 light of the claimant's medical history she is limited in her ability
27 to lift and/or carry, and these limitations are reflected in the
28 [residual functional capacity] identified above" (A.R. 18).

1 The ALJ assigned no mental restrictions, citing Dr. Colonna's
2 assessment that Plaintiff would have only mild limitations in her
3 ability to carry out detailed instructions (A.R. 15). The ALJ deemed
4 Plaintiff's mental condition non-severe because the condition would
5 cause no more than a minimal limitation on Plaintiff's ability to
6 perform basic mental work activities. See A.R. 15; see also 20 C.F.R.
7 §§ 404.1521, 416.921 (defining non-severity). Plaintiff does not
8 appear to dispute this conclusion.

9
10 The consultative examiners' findings constitute substantial
11 evidence supporting the ALJ's decision. See Tonapetyan v. Halter, 242
12 F.3d 1144, 1149 (9th Cir. 2001) (consulting examiner's opinion is
13 substantial evidence that can support an ALJ's finding of
14 nondisability); see also Orn v. Astrue, 495 F.3d 625, 632 (9th Cir.
15 2007) (examining physician's independent clinical findings are
16 substantial evidence).

17
18 Additional support for the ALJ's decision is found in the
19 opinions of the non-examining State agency physician. See Tonapetyan
20 v. Halter, 242 F.3d at 1149 (non-examining physician's opinion may
21 constitute substantial evidence when opinion is consistent with
22 independent evidence of record); Lester v. Chater, 81 F.3d 821, 831
23 (9th Cir. 1995) (same). State agency physician P.N. Ligot completed a
24 Physical Residual Functional Capacity Assessment form for Plaintiff
25 dated January 26, 2009 (A.R. 548-52). Like Dr. Sultan, Dr. Ligot
26 found that Plaintiff has the capacity to perform medium work. Id.

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1 To the extent the record contains conflicting medical evidence,
2 it was the prerogative of the ALJ to resolve the conflicts. See Lewis
3 v. Apfel, 236 F.3d 503, 509 (9th Cir. 2001). Where, as here, the
4 evidence "is susceptible to more than rational interpretation," the
5 Court must uphold the administrative decision. See Andrews v.
6 Shalala, 53 F.3d 1035, 1039-40 (1995); accord Thomas v. Barnhart, 278
7 F.3d 947, 954 (9th Cir. 2002); Sandgate v. Chater, 108 F.3d 978, 980
8 (9th Cir. 1997).

9
10 Having found that Plaintiff retains the residual functional
11 capacity to perform the full range of light work, the ALJ properly
12 relied on the Dictionary of Occupational Titles ("DOT") and vocational
13 expert testimony to conclude that Plaintiff can perform her past
14 relevant work as a single needle sewing machine operator as generally
15 performed (A.R. 20). The DOT listing for lockstitch-machine operator
16 (garment) (alternatively titled "single-needle operator") describes
17 the job as requiring light exertion. See DOT 786.682-170; see also
18 A.R. 43 (vocational expert testifying that the normal exertional level
19 for a sewing machine operator is light). This evidence supports the
20 ALJ's conclusion that Plaintiff can work. See Social Security Ruling
21 ("SSR") 82-62 ("The [residual functional capacity] to meet the
22 physical and mental demands of jobs a claimant has performed in the
23 past (either the specific job a claimant performed or the same kind of
24 work as it is customarily performed throughout the economy) is
25 generally a sufficient basis for a finding of 'not disabled.' . . .
26 Determination of the claimant's ability to do [past relevant work]
27 requires a careful appraisal of . . . in some cases, supplementary or
28 corroborative information from other sources such as employers, the

1 Dictionary of Occupational Titles, etc., on the requirements of the
2 work as generally performed in the economy."); see also Kennedy v.
3 Astrue, 2012 WL 2131870, at *12 (D. Nev. May 4, 2012), adopted, 2012
4 WL 2131458 (D. Nev. June 11, 2012) (DOT listing and vocational expert
5 testimony that past relevant work required light exertion amply
6 supported ALJ's determination that a claimant who could perform a full
7 range of light work was capable of performing the claimant's past
8 relevant work).⁷

9
10 **II. The ALJ Did Not Materially Err in Evaluating Dr. Romano's**
11 **Opinions.**

12
13 Plaintiff argues that the ALJ erred in rejecting the opinions of
14 treating rheumatologist Dr. Romano. See Plaintiff's Motion, pp. 3-7.
15 Dr. Romano provided Plaintiff with a letter dated January 26, 2010,
16 urging that Plaintiff's MediCal not be taken away (A.R. 584). Dr.
17 Romano also completed a Multiple Impairment Questionnaire dated
18 February 10, 2010 (A.R. 586-93). Dr. Romano diagnosed severe
19 osteoarthritis in both knees and status post-arthroscopic debridement
20 of the right knee, and gave Plaintiff a "poor" prognosis (A.R. 586).
21 Dr. Romano reported clinical findings supposedly showing severe
22 crepitus and decreased range of motion in both knees with positive
23 McMurray in her right knee, and marked quadricep atrophy in her thighs
24 bilaterally, and laboratory testing showing grade IV chondromalacia in
25 both knees from x-rays, assertedly confirmed by the arthroscopic

26
27 ⁷ Social Security rulings are binding on the
28 Administration. See Terry v. Sullivan, 903 F.2d 1273, 1275 n.1
(9th Cir. 1990).

1 surgery (A.R. 586-87). Dr. Romano opined that Plaintiff's condition
2 causes severe pain in her knees, stiffness, and locking and buckling
3 of the knee (A.R. 587). The pain reportedly is severe and constant,
4 worsened by prolonged rest and prolonged walking (A.R. 587). Dr.
5 Romano ranked Plaintiff's pain and fatigue at nine on a scale of zero
6 to ten (A.R. 588).

7
8 Dr. Romano opined that Plaintiff would be able to sit one hour a
9 day and stand and walk less than one hour a day, and indicated that it
10 would be "necessary or medically recommended" that Plaintiff not sit
11 continuously or stand/walk continuously in a work setting (A.R. 588-
12 89). Every 30 minutes, Plaintiff reportedly would need to get up and
13 move around for 15 minutes (A.R. 588-89). Dr. Romano further opined
14 that Plaintiff could occasionally lift and carry less than five
15 pounds, and would have moderate upper extremity limitations (A.R. 589-
16 90). Plaintiff was taking tramadol for her pain, which supposedly
17 causes drowsiness, and also was taking Celebrex (A.R. 590). Dr.
18 Romano indicated that Plaintiff's symptoms would increase if she
19 worked, and that her condition would interfere with her ability to
20 keep her neck in a constant position (A.R. 590). Dr. Romano opined
21 that Plaintiff would need to take unscheduled breaks every 15 minutes
22 for 30 minutes or more, and would be absent from work more than three
23 times each month (A.R. 591-92). Dr. Romano indicated that Plaintiff
24 would need a job that permits ready access to a restroom (A.R. 592).
25 Dr. Romano stated, "Pt has failed numerous therapies. She will
26 require bilateral total knee arthroplasties soon" (A.R. 592).

27 ///

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1 The ALJ considered, but gave "limited weight" to Dr. Romano's
2 opinion (A.R. 19-20). The ALJ explained:

3
4 Dr. Romano opined that the claimant suffers from extreme
5 limitations; however, his own progress reports fail to
6 reveal the type of significant clinical and laboratory
7 abnormalities one would expect if the claimant did, in fact,
8 have such limitations and the doctor did not specifically
9 address this weakness. While Dr. Romano noted on
10 examination in March 2009 that the claimant had decreased
11 range of motion with crepitus, the remainder of progress
12 notes until September 2009 consist only of reports that the
13 claimant received injections to her knees. In September,
14 Dr. Romano asserted that the injections and pain patches
15 "did help her knee." The claimant did not return until
16 January 2010, when Dr. Romano noted only mildly swollen and
17 tender knees with joint space narrowing. Furthermore, as
18 noted above, the claimant admitted that the "injections
19 helped and she is happy with the [anti-inflammatory] and
20 does not need injections at this time." The undersigned
21 also finds that there is no medical evidence supporting
22 limitations related to keeping the neck in a constant
23 position, sitting for only [one] hour in an 8-hour workday;
24 and requiring a job that permits ready access to the
25 restroom. Given the lack of objective support, Dr. Romano's
26 assessment apparently relied quite heavily on the subjective
27 report of symptoms and limitations provided by the claimant,
28 and seemed to uncritically accept as true most, if not all,

1 of what the claimant reported. Yet, as explained elsewhere
2 in this decision, there exist good reasons for questioning
3 the reliability of the claimant's subjective symptoms.
4

5 (A.R. 19-20 (internal citations omitted)).
6

7 The ALJ's stated reasons adequately support the rejection of Dr.
8 Romano's contradicted opinions regarding the severity of Plaintiff's
9 limitations. See Valentine v. Commissioner, 574 F.3d 685, 692 (9th
10 Cir. 2009) (an ALJ must provide "specific, legitimate reasons" based
11 on substantial evidence in the record for rejecting a treating
12 physician's contradicted opinion); Orn v. Astrue, 495 F.3d at 631-33
13 (same). First, the ALJ properly rejected Dr. Romano's opinions
14 regarding severity as unsupported by progress notes or clinical
15 findings. See Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir.
16 2005) (contradiction between treating physician's assessment and
17 clinical notes justifies rejection of assessment); Batson v.
18 Commissioner, 359 F.3d 1190, 1195 (9th Cir. 2004) ("an ALJ may
19 discredit treating physicians' opinions that are conclusory, brief,
20 and unsupported by the record as a whole . . . or by objective medical
21 findings"); Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003)
22 (treating physician's opinion properly rejected where treating
23 physician's treatment notes "provide no basis for the functional
24 restrictions he opined should be imposed on [the claimant].").
25

26 Second, the ALJ properly rejected Dr. Romano's opinions as
27 reliant on Plaintiff's subjective complaints. An ALJ is free to
28 disregard a treating physician opinion that is based on a claimant's

1 subjective complaints where the ALJ has properly discounted those
2 subjective complaints. See Tonapetyan v. Halter, 242 F.3d at 1149;
3 Fair v. Bowen, 885 F.2d 597, 605 (9th Cir. 1989) (disregarding opinion
4 premised on claimant's properly-discounted subjective complaints is a
5 specific, legitimate reason for rejecting a treating physician's
6 opinion); see also Mattox v. Commissioner of Social Security, 371 Fed.
7 App'x 740, 742 (9th Cir. 2010) ("a physician's opinion of disability
8 premised to a large extent upon the claimant's own accounts of his
9 symptoms and limitations may be disregarded where those complaints
10 have been properly discounted") (internal quotations and citations
11 omitted).⁸ As discussed below, the ALJ properly discounted
12 Plaintiff's subjective complaints.

13
14 **III. The ALJ Did Not Materially Err By Deeming Plaintiff's Testimony**
15 **Less Than Fully Credible.**

16
17 Plaintiff argues that the ALJ did not properly assess Plaintiff's
18 testimony regarding her alleged limitations. See Plaintiff's Motion,
19 pp. 7-9. An ALJ's assessment of a claimant's credibility is entitled
20 to "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th
21 Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). The
22 discounting of a claimant's testimony regarding subjective symptoms
23 must be supported by specific, cogent findings. See Lester v. Chater,
24 81 F.3d at 834; see also Berry v. Astrue, 622 F.3d 1228, 1234 (9th
25 Cir. 2010) (reaffirming same); Varney v. Secretary of Health and Human

26
27 ⁸ The Court may cite to unpublished Ninth Circuit
28 opinions issued on or after January 1, 2007. See U.S. Ct. App.
9th Cir. Rule 36-3(b).

1 Serv., 846 F.2d 581, 584 (9th Cir. 1988) (generally discussing
2 specificity requirement); but see Smolen v. Chater, 80 F.3d 1273,
3 1282-84 (9th Cir. 1996) (indicating that ALJ must offer "specific,
4 clear and convincing" reasons to reject a claimant's testimony where
5 there is no evidence of malingering).⁹ Contrary to Plaintiff's
6 argument, the ALJ stated sufficient reasons for deeming Plaintiff's
7 testimony less than fully credible.

8
9 Plaintiff testified that she has problems walking. Plaintiff
10 said that she could walk only 10 minutes before needing rest (A.R.
11 46). Plaintiff began using a cane in 2006, although a cane has never
12 been prescribed for her (A.R. 47). Plaintiff said she could sit for
13 20 to 30 minutes before having to get up, and stand for five minutes
14 at most (A.R. 47-48). Plaintiff said she lies down during the day
15 when she takes her medication (A.R. 48). Plaintiff testified that Dr.
16 Romano told her that with the knee injections she would be able to
17 walk and feel well, but she supposedly was not able to do so (A.R.
18 49).

19
20 In an undated Disability Report - Adult form, Plaintiff reported
21 that she stopped working because she was limited to standing no more

22
23 ⁹ In the absence of evidence of "malingering," most
24 recent Ninth Circuit cases have applied the "clear and
25 convincing" standard. See, e.g., Molina v. Astrue, 674 F.3d 1104
26 (9th Cir. 2012); Taylor v. Commissioner, 659 F.3d 1228, 1234 (9th
27 Cir. 2011); Valentine v. Commissioner, 574 F.3d at 693; Carmickle
28 v. Commissioner, 533 F.3d 1155, 1160 (9th Cir. 2008);
Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007);
Ballard v. Apfel, 2000 WL 1899797, at *2 n.1 (C.D. Cal. Dec. 19,
2000) (collecting cases). In the present case, the ALJ's
findings are sufficient under either standard, so the distinction
between the two standards (if any) is academic.

1 than three minutes and walking only with a cane or crutches (A.R.
2 173). Plaintiff reported severe pain in her hip, low back, knees, and
3 heels, allegedly making it "very difficult and painful to walk" (A.R.
4 174).

5
6 Yet, in an Exertion Questionnaire dated October 28, 2008,
7 Plaintiff reported that she spends her days cleaning her house (A.R.
8 169). Plaintiff reportedly could clean for about 15 minutes before
9 needing to rest for at least 30 minutes due to pain in her hip, lower
10 back, and knees (A.R. 171). Plaintiff reported that her Tramadol,
11 which she takes four times a day for pain, makes her sleepy (A.R. 169,
12 171). Plaintiff reported that she slowly walks 30 to 40 minutes to a
13 bus stop when she has doctor appointments (A.R. 169). Plaintiff also
14 reported that she "sit[s] mostly all day" (A.R. 170). Plaintiff
15 indicated that she drives a manual car, but claimed that she does not
16 have a license and cannot drive anymore because of her knee pain (A.R.
17 170). Plaintiff reported taking one nap per day for 15 to 30 minutes
18 (A.R. 171). Plaintiff reported using a cane "every day; every where"
19 and a wheelchair when she goes to the market (A.R. 171). Plaintiff
20 reported that her condition had gotten worse since her surgery (A.R.
21 171).

22
23 The ALJ found that Plaintiff's medically determinable impairments
24 could reasonably cause Plaintiff's alleged symptoms (A.R. 16). The
25 ALJ found Plaintiff's testimony concerning the extent of her
26 limitations less than fully credible, however. Id. The ALJ explained
27 that Plaintiff's testimony concerning her need for a cane and her
28 other exertional limitations are "notably without support from the

1 medical record, which are conspicuously absent severe medical
2 abnormalities that would account for consistent significant problems
3 with standing and/or walking" (A.R. 16-17). The ALJ observed that the
4 cane was not prescribed, the medical record was devoid of any evidence
5 that Plaintiff uses her cane on a daily basis or brought her cane to
6 her doctors' visits,¹⁰ and Dr. Sultan observed that Plaintiff could
7 get into and out of a chair without difficulty, get on and off the
8 examination table without difficulty, and walk across the room without
9 difficulty (A.R. 17).¹¹ The ALJ also stated that Plaintiff's
10 allegations were not fully credible in light of the evidence showing
11 Plaintiff's eventual knee improvement with arthroscopy and injections,
12 the relatively mild findings with respect to Plaintiff's lumbar spine,
13 and the lack of medical treatment one would expect for allegedly
14 disabling pain (A.R. 17-18). Although a claimant's credibility
15 "cannot be rejected on the sole ground that it is not fully
16 corroborated by objective medical evidence, the medical evidence is
17 still a relevant factor. . . ." Rollins v. Massanari, 261 F.3d 853,
18 857 (9th Cir. 2001); see also Burch v. Barnhart, 400 F.3d 676, 681
19 (9th Cir. 2005) ("lack of medical evidence" can be "a factor" in

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25 ¹⁰ The only regular doctor visit at which Plaintiff
26 reportedly used a cane occurred on August 21, 2008, when
27 Plaintiff asked Dr. Brown to fill out disability forms. See A.R.
28 259. Plaintiff also used a cane for her psychological
consultative examination (A.R. 529).

¹¹ See A.R. 521, 524 (Dr. Sultan's observations).

1 rejecting credibility, but cannot "form the sole basis").¹²

2
3 The ALJ also cited Plaintiff's failure to follow up on
4 recommendations made by treating doctors, such as recommendations for
5 additional physical therapy (A.R. 18). Plaintiff testified that she
6 did not receive physical therapy apart from therapy for one month
7 after her knee surgery in 2008, notwithstanding the recommendation for
8 physical therapy a year later by her treating podiatrist (A.R. 40; see
9 also A.R. 610 (podiatrist's recommendation)). Failure to seek medical
10 treatment can justify an adverse credibility determination. See
11 Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991); Fair v. Bowen,
12 885 F.2d 597, 603-04 (9th Cir. 1989); see also Molina v. Astrue, 674
13 F.3d 1104, 1112 (9th Cir. 2012) ("ALJ may consider. . . unexplained or
14 inadequately explained failure to seek treatment or to follow a
15 prescribed course of treatment" in evaluating claimant's credibility).

16
17 Finally, the ALJ also discounted Plaintiff's credibility based on
18 inconsistencies (A.R. 19). The ALJ cited, inter alia, Plaintiff's

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20 ¹² The ALJ cited Plaintiff's "fairly limited" daily
21 activities as not "objectively verified with any reasonable
22 degree of certainty," and as difficult to attribute to
23 Plaintiff's medical condition, "as opposed to other reasons"
24 (A.R. 18-19). This reasoning does not add any appreciable
25 support to the ALJ's credibility determination. A claimant's
26 alleged limitations on daily activities need not be subject to
27 independent verification. Cf. Smolen v. Chater, 80 F.3d 1273,
28 1282 (9th Cir. 1996) ("claimant need not . . . produce objective
medical evidence of the causal relationship between the medically
determinable impairment and the symptom"). If error, however,
this part of the ALJ's credibility analysis was harmless error.
See Carmickle v. Commissioner, 533 F.3d 1155, 1162-63 (9th Cir.
2008) (invalid reason given for credibility determination
harmless where ALJ stated other, valid reasons for the
determination).

1 testimony that she stopped driving in 1995, and Dr. Sultan's report
2 that Plaintiff drove herself to the appointment in 2008 (A.R. 19; see
3 also A.R. 37-39 (ALJ questioning Plaintiff re same during
4 administrative hearing); A.R. 520 (Dr. Sultan noting that Plaintiff
5 was able to drive herself to the office)). An inconsistency between a
6 claimant's testimony and conduct can support the rejection of a
7 claimant's credibility. See Molina v. Astrue, 674 F.3d at 1112 (in
8 evaluating a claimant's credibility, an "ALJ may consider
9 inconsistencies either in the claimant's testimony or between the
10 testimony and the claimant's conduct"); Thomas v. Barnhart, 278 F.3d
11 947, 958-59 (9th Cir. 2002) (same); Verduzco v. Apfel, 188 F.3d 1087,
12 1090 (9th Cir. 1999) (same).

13
14 Because the ALJ's credibility findings were sufficiently specific
15 to allow this Court to conclude that the ALJ rejected Plaintiff's
16 testimony on permissible grounds, Moisa v. Barnhart, 367 F.3d 882, 885
17 (9th Cir. 2004), the Court defers to the ALJ's credibility findings.
18 See Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court
19 will defer to ALJ's credibility determination when the proper process
20 is used and proper reasons for the decision are provided); accord
21 Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1464
22 (9th Cir. 1995).

23
24 **IV. The ALJ Did Not Materially Err in Finding that Plaintiff Can**
25 **Perform Her Past Relevant Work.**
26

27 Plaintiff argues that the ALJ erred in finding that Plaintiff
28 could perform her past relevant work because the ALJ supposedly failed

1 to account for the fact that the sewing machine operator job requires
2 the use of a pedal or knee lever. See Plaintiff's Motion, p. 9
3 (citing DOT 786.682-070 [sic]); see also DOT 786.682-170 (DOT listing
4 for Plaintiff's past relevant work incorporates by reference duties
5 described under "Sewing-machine operator, regular equipment (any
6 industry) Master Title," which include "using a pedal or knee lever").
7 Plaintiff argues that the ALJ should have made separate findings
8 regarding whether Plaintiff is able to perform each of the activities
9 that Plaintiff's past relevant work requires.

10
11 As discussed above, substantial evidence supports the ALJ's
12 finding that Plaintiff is capable of performing the full range of
13 light work, without any further limitations regarding the use of her
14 lower extremities. Therefore, the ALJ need not have parsed the
15 particular requirements of the light work job of sewing machine
16 operator as generally performed. See, e.g., Dodd v. Astrue, 2012 WL
17 1438684, at *6 (D. Or. April 24, 2012) (affirming ALJ's finding that
18 claimant could perform past relevant work classified as "unskilled,
19 light" where Plaintiff retained residual functional capacity to
20 perform the full range of light work; claimant did not establish any
21 greater limitations, and the ALJ was not required further to develop
22 the demands of the claimant's past relevant work pertaining to alleged
23 limitations; the DOT and vocational expert's testimony provided
24 sufficient detail to support the ALJ's decision).

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1 **CONCLUSION**

2
3 For all of the reasons discussed herein, Plaintiff's motion for
4 summary judgment is denied and Defendant's motion for summary judgment
5 is granted.¹³

6
7 LET JUDGMENT BE ENTERED ACCORDINGLY.

8
9 DATED: July 16, 2012.

10
11 _____/S/_____
12 CHARLES F. EICK
13 UNITED STATES MAGISTRATE JUDGE
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25 ¹³ The Court has considered and rejected each of
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the
27 circumstances of this case show any "substantial likelihood of
28 prejudice" resulting from any error allegedly committed by the
Administration. See generally McLeod v. Astrue, 634 F.3d 516,
522-23 (9th Cir. 2011) (discussing the standards applicable to
evaluating prejudice).