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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KAREN MILDRED PEDREGON,	)	Case No. EDCV 12-0361-JPR
	)	
Plaintiff,	)	
	)	MEMORANDUM OPINION AND ORDER
vs.	)	AFFIRMING THE COMMISSIONER
	)	
CAROLYN W. COLVIN, Acting	)	
Commissioner of Social	)	
Security, <sup>1</sup>	)	
	)	
Defendant.	)	
	)	

**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying her application for Social Security disability insurance benefits ("DIB"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed February 8, 2013, which the Court has taken under submission without oral argument. For the reasons stated

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<sup>1</sup> On February 14, 2013, Colvin became the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d), the Court therefore substitutes Colvin for Michael J. Astrue as the proper Respondent.

1 below, the Commissioner's decision is affirmed and this action is  
2 dismissed.

3 **II. BACKGROUND**

4 Plaintiff was born on February 7, 1961, and has a 12th-grade  
5 education. (Administrative Record ("AR") 37, 123.) She  
6 previously worked in membership sales and as a cashier/checker  
7 and material handler. (AR 25, 56-57.)

8 On June 27, 2008, Plaintiff filed an application for DIB.  
9 (AR 62, 123-25.) Plaintiff alleged that she had been unable to  
10 work since January 23, 2007,<sup>2</sup> because of bilateral plantar  
11 fasciitis and neck and back pain. (AR 64, 123.) Her application  
12 was denied initially, on September 18, 2008 (AR 62, 64-68), and  
13 upon reconsideration, on January 29, 2009 (AR 63, 69-73).

14 On March 12, 2009, Plaintiff requested a hearing before an  
15 Administrative Law Judge ("ALJ"). (AR 90-91.) A hearing was  
16 held on May 20, 2010, at which Plaintiff, who was represented by  
17 counsel, appeared and testified. (AR 32-56.) A vocational  
18 expert ("VE") also testified. (AR 55-59.) In a written decision  
19 issued on July 12, 2010, the ALJ determined that Plaintiff was  
20 not disabled. (AR 19-26.) On July 19, 2010, Plaintiff requested  
21 review of the ALJ's decision. (AR 15.) On January 13, 2012, the  
22 Appeals Council denied Plaintiff's request for review. (AR 1-5.)  
23 This action followed.

24 **III. STANDARD OF REVIEW**

25 Pursuant to 42 U.S.C. § 405(g), a district court may review  
26 the Commissioner's decision to deny benefits. The ALJ's findings

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27  
28 <sup>2</sup> Plaintiff subsequently amended her alleged disability  
onset date to March 1, 2008. (AR 53.)

1 and decision should be upheld if they are free of legal error and  
2 supported by substantial evidence based on the record as a whole.  
3 § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct.  
4 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481 F.3d  
5 742, 746 (9th Cir. 2007). Substantial evidence means such  
6 evidence as a reasonable person might accept as adequate to  
7 support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter  
8 v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than  
9 a scintilla but less than a preponderance. Lingenfelter, 504  
10 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880,  
11 882 (9th Cir. 2006)). To determine whether substantial evidence  
12 supports a finding, the reviewing court "must review the  
13 administrative record as a whole, weighing both the evidence that  
14 supports and the evidence that detracts from the Commissioner's  
15 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.  
16 1996). "If the evidence can reasonably support either affirming  
17 or reversing," the reviewing court "may not substitute its  
18 judgment" for that of the Commissioner. Id. at 720-21.

#### 19 **IV. THE EVALUATION OF DISABILITY**

20 People are "disabled" for purposes of receiving Social  
21 Security benefits if they are unable to engage in any substantial  
22 gainful activity owing to a physical or mental impairment that is  
23 expected to result in death or which has lasted, or is expected  
24 to last, for a continuous period of at least 12 months. 42  
25 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257  
26 (9th Cir. 1992).

##### 27 A. The Five-Step Evaluation Process

28 The ALJ follows a five-step sequential evaluation process in

1 assessing whether a claimant is disabled. 20 C.F.R.  
2 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th  
3 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the  
4 Commissioner must determine whether the claimant is currently  
5 engaged in substantial gainful activity; if so, the claimant is  
6 not disabled and the claim must be denied. § 404.1520(a)(4)(i).  
7 If the claimant is not engaged in substantial gainful activity,  
8 the second step requires the Commissioner to determine whether  
9 the claimant has a "severe" impairment or combination of  
10 impairments significantly limiting his ability to do basic work  
11 activities; if not, the claimant is not disabled and the claim  
12 must be denied. § 404.1520(a)(4)(ii). If the claimant has a  
13 "severe" impairment or combination of impairments, the third step  
14 requires the Commissioner to determine whether the impairment or  
15 combination of impairments meets or equals an impairment in the  
16 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part  
17 404, Subpart P, Appendix 1; if so, disability is conclusively  
18 presumed and benefits are awarded. § 404.1520(a)(4)(iii). If  
19 the claimant's impairment or combination of impairments does not  
20 meet or equal an impairment in the Listing, the fourth step  
21 requires the Commissioner to determine whether the claimant has  
22 sufficient residual functional capacity ("RFC")<sup>3</sup> to perform his  
23 past work; if so, the claimant is not disabled and the claim must  
24 be denied. § 404.1520(a)(4)(iv). The claimant has the burden of  
25 proving that he is unable to perform past relevant work. Drouin,

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27 <sup>3</sup> RFC is what a claimant can still do despite existing  
28 exertional and nonexertional limitations. 20 C.F.R. § 404.1545;  
see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 966 F.2d at 1257. If the claimant meets that burden, a prima  
2 facie case of disability is established. Id. If that happens or  
3 if the claimant has no past relevant work, the Commissioner then  
4 bears the burden of establishing that the claimant is not  
5 disabled because he can perform other substantial gainful work  
6 available in the national economy. § 404.1520(a)(4)(v). That  
7 determination comprises the fifth and final step in the  
8 sequential analysis. § 404.1520; Lester, 81 F.3d at 828 n.5;  
9 Drouin, 966 F.2d at 1257.

10 B. The ALJ's Application of the Five-Step Process

11 At step one, the ALJ found that Plaintiff had not engaged in  
12 any substantial gainful activity since March 1, 2008, her amended  
13 alleged onset date. (AR 21.) At step two, the ALJ concluded  
14 that Plaintiff had the severe impairments of "history of  
15 bilateral plantar fasciitis; and degenerative disk disease of the  
16 cervical spine, status post fusion." (Id. (citation omitted).)  
17 At step three, the ALJ determined that Plaintiff's impairments  
18 did not meet or equal any of the impairments in the Listings,  
19 focusing specifically on Listing 1.00. (AR 21-22.) At step  
20 four, the ALJ found that Plaintiff retained the RFC to perform  
21 light work<sup>4</sup> but was limited to "occasionally performing postural  
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23 <sup>4</sup> "Light work" is defined as involving "lifting no more  
24 than 20 pounds at a time with frequent lifting or carrying of  
25 objects weighing up to 10 pounds." 20 C.F.R. § 404.1567(b). The  
26 regulations further specify that "[e]ven though the weight lifted  
27 may be very little, a job is in this category when it requires a  
28 good deal of walking or standing, or when it involves sitting most  
of the time with some pushing and pulling of arm or leg controls."  
Id. A person capable of light work is also capable of "sedentary  
work," which involves lifting "no more than 10 pounds at a time and  
occasionally lifting or carrying [small articles]" and may involve

1 activities; no ladders, ropes or scaffolds; occasional over  
2 shoulder/over head reaching bilaterally; no unprotected heights;  
3 no dangerous machinery; and she must avoid extreme cold and  
4 vibration." (AR 22.) Based on the VE's testimony, the ALJ  
5 concluded that Plaintiff could perform her past relevant work in  
6 membership sales and as a cashier. (AR 25.) Accordingly, the  
7 ALJ determined that Plaintiff was not disabled without reaching  
8 step five of the evaluation process. (AR 26.)

9 **V. RELEVANT FACTS**

10 Plaintiff underwent two surgeries to treat her plantar  
11 fasciitis, in 1999 and 2000, and continued to work on modified  
12 duty for several years after the surgeries. (AR 417, 454.) Her  
13 symptoms increased in 2007, and she received a series of off-work  
14 orders from her treating podiatrist, Dr. Glenn Ocker, between  
15 January 2007 and January 2008. (AR 180-81, 185, 189, 192, 196,  
16 198-206, 208-09.) At the hearing, Plaintiff testified that  
17 between January 2007 and March 1, 2008, her alleged onset date,  
18 she would have been able to work in a "seated job." (AR 40.)

19 In March 2008, Plaintiff began experiencing neck pain and  
20 was initially treated with pain medication and physical therapy.  
21 (AR 303-06, 419-21.) On April 21, 2008, Plaintiff was evaluated  
22 by Dr. Sachin Patel for right shoulder pain, and he treated her  
23 with a cortisone injection. (AR 423-24.) On May 7, 2008,  
24 Plaintiff reported to Dr. Patel that her shoulder impingement was  
25 "1000 times better after the cortisone injection." (AR 422.)  
26 Dr. Patel was "happy with her progress" and opined that Plaintiff

27 \_\_\_\_\_  
28 occasional walking or standing. § 404.1567(a)-(b).

1 might need another cortisone injection in the future if her  
2 symptoms recurred. (Id.)

3 On July 18, 2008, an MRI of Plaintiff's cervical spine  
4 revealed mild to moderate central canal stenosis and severe right  
5 neural foramina stenosis at C4-5 secondary to a six-millimeter  
6 right paracentral disc herniation/extrusion; minimal to mild  
7 central canal stenosis and minimal to mild left neural foraminal  
8 stenosis at C5-6 secondary to a three-millimeter left paracentral  
9 broad-based disc protrusion; and minimal central canal stenosis  
10 at C3-4 secondary to a two-millimeter bulging of the disc. (AR  
11 338-39.) Plaintiff continued conservative treatment for her neck  
12 pain for approximately six months, but her symptoms did not  
13 improve. (AR 334.) As a result, on October 21, 2008, Plaintiff  
14 underwent an anterior cervical discectomy, arthrodesis or spinal  
15 fusion, and the insertion of titanium plates at C4-5 performed by  
16 Dr. Jose Rodriguez, Plaintiff's treating neurosurgeon. (AR 329-  
17 31.) On November 4, 2008, Plaintiff reported that her neck pain  
18 had improved since surgery. (AR 332.) She had limited range of  
19 motion in her right shoulder secondary to pain, with weakness in  
20 the biceps but normal triceps function. (Id.)

21 On November 24, 2008, x-rays showed straightening of  
22 Plaintiff's cervical spine, a plate and multiple screws through  
23 C4-5 with bone dowel, status post-spinal fusion, mild  
24 degenerative changes at C5-6 and C6-7, and mild levoscoliosis of  
25 the cervical spine; the rest of the bones appeared unremarkable.  
26 (AR 341.) Following surgery, Plaintiff continued conservative  
27 treatment with Dr. Rodriguez, including physical therapy and pain  
28 medications. (AR 380-89, 392-93.)

1 On September 18, 2008, consulting physician R. Bitonte  
2 reviewed Plaintiff's medical records and completed a physical RFC  
3 assessment; he opined that Plaintiff was capable of performing  
4 light work except that she could only occasionally climb, stoop,  
5 kneel, crouch, or crawl, and she should never balance. (AR 320-  
6 26.) Moreover, Dr. Bitonte stated that Plaintiff's ability to  
7 reach was limited and she should avoid concentrated exposure to  
8 extreme cold, vibration, fumes, and hazards. (AR 322-23.) Dr.  
9 Bitonte's findings were affirmed by consulting physician S.  
10 Laiken on January 27, 2009. (AR 363-64.)

11 On January 12, 2010, Plaintiff was examined by consulting  
12 orthopedist Dr. Bunsri Sophon. (AR 367-72.) Dr. Sophon found  
13 that Plaintiff was obese but not in any acute distress; her  
14 posture and gait were normal; and examination of her cervical  
15 spine revealed "a well-healed non-tender 4 cm right transverse  
16 surgical scar on the neck" and no evidence of tenderness or  
17 muscle spasm, with 30/70-degree flexion, 30/60-degree extension,  
18 20/45-degree lateral bending bilaterally, and 45/80-degree  
19 rotation bilaterally. (AR 369-70.) Further, her thoracic and  
20 lumbar spine showed no evidence of tenderness or muscle spasm,  
21 with 60/90-degree flexion, 25/30-degree extension, and 25/25-  
22 degree lateral bending bilaterally; her straight-leg-raising test  
23 was normal; her upper and lower extremities were all normal, with  
24 no decreased range of motion and no deformity, swelling, palpable  
25 mass, inflammation, or tenderness; and her neurological  
26 examination and motor strength were normal. (AR 370-71.) Dr.  
27 Sophon diagnosed Plaintiff with lumbosacral strain and cervical  
28 disc disease, status post-C4-5 spinal fusion. (AR 372.)



1 Finally, Dr. Sophon concluded that Plaintiff was "capable of  
2 lifting and carrying 50 pounds occasionally, 20 pounds  
3 frequently," and "is restricted to sitting, standing and walking  
4 6 hours out of an 8-hour workday." (Id.)

5 On February 1, 2010, Dr. Rodriguez reported that Plaintiff  
6 was in good spirits and her cervical spine had full range of  
7 motion. (AR 378-79.) She still experienced some pain, but it  
8 was reduced by physical therapy, massage, and the application of  
9 heat and ice. (AR 378.) Dr. Rodriguez compared an MRI done on  
10 December 9, 2009, to her old MRI and noted resolution of her  
11 previous herniated disc at C4-5. (AR 379.) He also noted his  
12 belief that Plaintiff had a right paracentral disc herniation at  
13 C5-6 and a small disc protrusion at C3-4. (Id.) On April 5,  
14 2010, Plaintiff reported that on a scale of one to 10, her pain  
15 was a four. (AR 376.) The range of motion of her cervical spine  
16 had some limitations, but she had full range of motion in her  
17 right shoulder girdle. (Id.) Dr. Rodriguez opined that no  
18 further surgery was recommended and Plaintiff should continue  
19 with conservative care. (AR 377.)

20 On April 19, 2010, Dr. William Landrey, Plaintiff's treating  
21 podiatrist, noted that x-rays of Plaintiff's feet were positive  
22 for both plantar calcaneal spurs and posterior spurs; an  
23 excessive amount of pronation was evident on the right; and the  
24 talus was anteriorly displaced as well as excessively closer to  
25 the median plane of the body than normal compared to the  
26 calcaneus. (AR 455.) The same day, Dr. Landrey completed a  
27 Medical Statement Regarding Foot Problem for Social Security  
28 Disability Claim, on which he noted that Plaintiff had had

1 "painful feet" for over 10 years and had been diagnosed with  
2 plantar fasciitis, achilles tendonitis, and heel spurs. (AR  
3 456.) He opined that Plaintiff could stand or walk for less than  
4 90 minutes in an eight-hour day for up to 30 minutes at a time  
5 and that she needed to elevate her legs occasionally in the  
6 morning and most of the time in the afternoon. (AR 456-57.)  
7 Moreover, she could sit for up to two hours in an eight-hour day  
8 and had to be able to walk around every hour during the day for  
9 about 15 minutes at a time. (AR 457.) Dr. Landrey also  
10 indicated that Plaintiff would be unable to walk one block at a  
11 reasonable pace on uneven or unstable ground and had mild foot  
12 pain that increased to severe with prolonged weight-bearing.  
13 (Id.) Additionally, Plaintiff needed 15-minute breaks every hour  
14 during an eight-hour workday and could lift 10 pounds  
15 occasionally and 20 pounds rarely. (Id.) Dr. Landrey further  
16 opined that Plaintiff could rarely twist, stoop, or crouch but  
17 should never climb ladders or stairs. (AR 458.) Finally, he  
18 stated that Plaintiff would likely have good days and bad days  
19 and miss more than four days a month because of her impairments.  
20 (Id.)

21 On April 23, 2010, four days after Dr. Landrey had filled  
22 out his medical statement, Dr. David Tran, who had been treating  
23 Plaintiff for about a year (AR 44), completed a Physical Residual  
24 Functional Capacity Questionnaire and indicated that Plaintiff  
25 had had neck pain since October 2008, low-back pain since 2001,  
26 and bilateral plantar fasciitis since 1998. (AR 460-64.) He  
27 stated that Plaintiff's diagnoses included neck pain with  
28 cervical radiculopathy, chronic low-back pain, bilateral plantar

1 fasciitis, depression, and anxiety. (AR 460.) Dr. Tran opined  
2 that Plaintiff's prognosis was poor and noted that she  
3 experienced symptoms of chronic pain in her neck, low back, and  
4 feet, as well as headaches, dizziness, and fatigue. (Id.) He  
5 also stated that Plaintiff's treatment had consisted of  
6 medications, and psychological symptoms affecting her physical  
7 condition included depression, anxiety, personality disorder, and  
8 sleep deprivation. (AR 460-61.) Moreover, Dr. Tran opined that  
9 Plaintiff frequently experienced pain that would interfere with  
10 her attention and concentration and was incapable of performing  
11 even a low-stress job because stress triggered her pain and  
12 headaches. (AR 461.) He explained that Plaintiff could sit or  
13 stand for 15 minutes at a time; sit, stand, or walk for up to two  
14 hours in an eight-hour workday; and rarely lift and carry less  
15 than ten pounds. (AR 461-62.) In addition, Dr. Tran stated that  
16 Plaintiff could rarely look down, occasionally turn her head  
17 right or left and look up, and frequently hold her head in a  
18 static position. (AR 463.) He also provided that she could  
19 rarely twist, stoop, or crouch, never climb ladders, and  
20 occasionally climb stairs. (Id.) Finally, for several of the  
21 questions on the form regarding Plaintiff's specific functional  
22 limitations, Dr. Tran simply wrote, "unable to work now." (AR  
23 462-63.)

24 In his decision, the ALJ gave "limited weight" to the  
25 opinions of Drs. Landrey and Tran because both opinions were (1)  
26 "unsupported" by any treatment notes; (2) "not supported by the  
27 objective medical evidence"; (3) "inconsistent with one another  
28 despite being opined days apart"; (4) "inconsistent with the

1 claimant's activities of daily living and her reports of reduced  
2 pain"; (5) "not consistent with the opinion that only  
3 conservative care is needed"; and (6) "inconsistent with findings  
4 of Dr. Sophon who examined the claimant three months earlier."  
5 (AR 24.) The ALJ also found that neither doctor specialized in  
6 psychology and that there was no evidence of a medically  
7 determinable mental impairment. (Id.) The ALJ gave "great  
8 weight" to Dr. Sophon's opinion because he "had the opportunity  
9 to examine the claimant, reviewed some of her records, and is a  
10 qualified expert in the field in which his opinions are based  
11 upon." (AR 25.) The ALJ also gave "great weight" to the  
12 reviewing nonexamining physicians' opinions because they  
13 "reviewed the claimant's records and are familiar with the  
14 [Social Security Administration's] rules and regulations." (Id.)

## 15 VI. DISCUSSION

16 Plaintiff alleges that the ALJ erred by (1) failing to  
17 consider the severity of Plaintiff's anxiety, depression, weight,  
18 right-shoulder impingement, and lower-back injury with disc  
19 damage; (2) failing to properly assess whether her condition met  
20 or equaled a Listing; (3) determining Plaintiff could perform her  
21 past relevant work; (4) failing to consider all the relevant  
22 factors in assessing Plaintiff's RFC; (5) failing to consider  
23 whether Plaintiff was disabled under the Medical-Vocational  
24 Guidelines, 20 C.F.R. Part 404, Subpart P, Appendix 2; and (6)  
25 finding that Plaintiff's subjective allegations were not fully  
26 credible. (J. Stip. at 3-4, 10-12, 17-20, 22-24, 33-36, 38, 44-

1 45.) None of these contentions warrant reversal.<sup>5</sup>

2 A. The ALJ Did Not Err in Determining Plaintiff's RFC

3 Plaintiff contends that the ALJ erred in determining that  
4 she retained the RFC to perform a limited range of light work.  
5 (J. Stip. at 22-24, 33-34.) Specifically, Plaintiff argues that  
6 the ALJ erred by (1) failing to account for "the fact [Plaintiff]  
7 had to take leave from work prior to her alleged onset date" (J.  
8 Stip. at 23), (2) rejecting the opinions of her treating  
9 physicians, Drs. Landrey and Tran (J. Stip. at 24, 33-34), and  
10 (3) "neglecting to consider testimony from the [VE] that  
11 supported a finding of 'disabled'" (J. Stip. at 24).

12 1. Applicable law

13 A district court must uphold an ALJ's RFC assessment when  
14 the ALJ has applied the proper legal standard and substantial  
15 evidence in the record as a whole supports the decision. Bayliss  
16 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ must  
17 have considered all the medical evidence in the record and  
18 "explain in [his or her] decision the weight given to . . . [the]  
19 opinions from treating sources, nontreating sources, and other  
20 nonexamining sources." 20 C.F.R. § 404.1527(e)(2)(ii). In  
21 making an RFC determination, the ALJ may consider those  
22 limitations for which there is support in the record and need not  
23 consider properly rejected evidence or subjective complaints.  
24 See Batson v. Comm'r of the Soc. Sec. Admin., 359 F.3d 1190,  
25 1197-98 (9th Cir. 2004) ("ALJ was not required to incorporate

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26  
27 <sup>5</sup> The Court has rearranged the order in which it addresses  
28 Plaintiff's claims from that followed by the parties, to avoid  
repetition and for other reasons.

1 evidence from the opinions of the claimant's treating physicians,  
2 which were permissibly discounted"); Bayliss, 427 F.3d at 1217  
3 (upholding ALJ's RFC determination because "the ALJ took into  
4 account those limitations for which there was record support that  
5 did not depend on [claimant's] subjective complaints").

6 An ALJ does not need to adopt any specific medical source's  
7 RFC opinion as his or her own. Vertigan v. Halter, 260 F.3d  
8 1044, 1049 (9th Cir. 2001) ("It is clear that it is the  
9 responsibility of the ALJ, not the claimant's physician, to  
10 determine residual functional capacity."); 20 C.F.R.

11 § 404.1546(c) ("[T]he administrative law judge . . . is  
12 responsible for assessing your residual functional capacity.").  
13 "The ALJ need not accept the opinion of any physician, including  
14 a treating physician, if that opinion is brief, conclusory, and  
15 inadequately supported by clinical findings." Thomas v.  
16 Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); accord Batson, 359  
17 F.3d at 1195. The Court must consider the ALJ's decision in the  
18 context of "the entire record as a whole," and if the "evidence  
19 is susceptible to more than one rational interpretation, the  
20 ALJ's decision should be upheld." Ryan v. Comm'r of Soc. Sec.,  
21 528 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation marks  
22 omitted).

## 23 2. Discussion

24 The ALJ found that Plaintiff retained the RFC to perform  
25 less than a full range of light work. (AR 22.) Specifically,  
26 the ALJ determined that Plaintiff "is limited to lifting/carrying  
27 10 pounds frequently, 20 pounds occasionally; sitting without  
28 restrictions but with normal breaks; standing and walking 6 hours

1 in an 8 hour workday, with appropriate breaks; occasionally  
2 performing postural activities; no ladders, ropes or scaffolds;  
3 occasional over shoulder/over head reaching bilaterally; no  
4 unprotected heights; no dangerous machinery; and she must avoid  
5 extreme cold and vibration." (Id.) He further stated that in  
6 making that RFC finding, he "considered all symptoms and the  
7 extent to which these symptoms can reasonably be accepted as  
8 consistent with the objective medical evidence and other  
9 evidence" and "also considered opinion evidence." (Id.)

10 Plaintiff argues that the ALJ erred in his RFC finding  
11 because he did not properly consider that Plaintiff was off work  
12 prior to her alleged onset date. (J. Stip. at 23.) The ALJ,  
13 however, explicitly considered medical evidence prior to  
14 Plaintiff's alleged onset date. (AR 23.) In particular, the ALJ  
15 considered evidence that Plaintiff became unable to work in  
16 January 2007 and received a series of off-work orders between  
17 January 2007 and January 2008. (Id.) Although a portion of  
18 Plaintiff's testimony seems to indicate that she was off work a  
19 year prior to January 2007 (AR 45), she later clarified that she  
20 officially left her job in January 2008 and had not been working  
21 for a year prior. (AR 53.) This is confirmed by the record  
22 evidence discussed above regarding Plaintiff's off-work orders.  
23 (See AR 179-209.)

24 Additionally, the ALJ properly considered Plaintiff's  
25 testimony that she could have worked in a "seated job" between  
26 January 2007 and March 2008, when her neck impairment began. (AR  
27 40, 45.) Indeed, following this discussion with the ALJ,  
28 Plaintiff and her counsel amended Plaintiff's alleged onset date

1 to March 2008 because Plaintiff conceded that she could have  
2 performed full-time work prior to that date. (AR 53.) Thus, the  
3 ALJ properly considered the evidence that Plaintiff was off work  
4 prior to her alleged onset date. Plaintiff is not entitled to  
5 reversal on this basis.

6 Plaintiff further contends that the ALJ's RFC finding was  
7 improper because it did not reflect the findings of her treating  
8 doctors, Drs. Landrey and Tran. (J. Stip. at 23-24, 33-34.)

9 Three types of physicians may offer opinions in social  
10 security cases: "(1) those who treat the claimant (treating  
11 physicians); (2) those who examine but do not treat the claimant  
12 (examining physicians); and (3) those who neither examine nor  
13 treat the claimant (non-examining physicians)." Lester, 81 F.3d  
14 at 830. The opinions of treating physicians are generally  
15 afforded more weight than those of nontreating physicians because  
16 treating physicians are employed to cure and have a greater  
17 opportunity to know and observe the claimant. Smolen v. Chater,  
18 80 F.3d 1273, 1285 (9th Cir. 1996). The weight given a treating  
19 physician's opinion depends on whether it was supported by  
20 sufficient medical data and was consistent with other evidence in  
21 the record. 20 C.F.R. § 404.1527(c)(2). If a treating  
22 physician's opinion was well supported by medically acceptable  
23 clinical and laboratory diagnostic techniques and was not  
24 inconsistent with other substantial evidence from the record, it  
25 should be given controlling weight and should be rejected only  
26 for "clear and convincing" reasons. Lester, 81 F.3d at 830; 20  
27 C.F.R. § 404.1527(c)(2). When a treating physician's opinion  
28 conflicts with other medical evidence or was not supported by



1 clinical or laboratory findings, the ALJ must provide only  
2 "specific and legitimate reasons" for discounting that doctor's  
3 opinion. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007).  
4 Factors relevant to the evaluation of a treating physician's  
5 opinion include the "[l]ength of the treatment relationship and  
6 the frequency of examination" and the "[n]ature and extent of the  
7 treatment relationship." 20 C.F.R. § 404.1527(c)(2)(i)-(ii).

8 The ALJ provided specific and legitimate reasons for  
9 discounting the opinions of Drs. Landrey and Tran.<sup>6</sup> First, apart  
10 from the checklist-style questionnaires both doctors submitted,  
11 the record contains only two treatment notes from Dr. Landrey, in  
12 April 2010 (AR 454-55), and no records from Dr. Tran. One of the  
13 notes from Dr. Landrey contained no treatment observations, only  
14 plaintiff's complaints. (AR 454.) As a result, the ALJ properly  
15 rejected both opinions on the basis that they were "unsupported."  
16 (AR 24); Batson, 359 F.3d at 1194-95 (holding that treating  
17 physicians' conflicting, checklist-form opinions were entitled to  
18 minimal weight).

19 Second, the ALJ properly rejected the opinions on the basis  
20 that they were not supported by the objective medical evidence.  
21 (AR 24.) For example, Plaintiff's treatment records indicated  
22 that her neck pain improved after her surgery, and post-surgery  
23 diagnostic testing showed that her cervical spine had  
24 straightened and only mild degenerative changes at the C5-6 and  
25

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26  
27 <sup>6</sup> Because they conflicted with the opinions of the state-  
28 agency physicians, the ALJ needed to provide only "specific and  
legitimate" reasons for rejecting them. See Carmickle v. Comm'r,  
Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008).

1 C6-7 levels remained. (AR 341, 382, 386, 402.) The evidence  
2 also shows that while Plaintiff complained of right-shoulder pain  
3 in 2008, it improved after a cortisone shot, and she did not  
4 complain of any shoulder pain or exhibit reduced range of motion  
5 in her 2010 consultative exam. (AR 367, 370, 422.) It is also  
6 clear from the record that Plaintiff's plantar fasciitis had  
7 improved by January 2008; during her 2010 consultative exam, she  
8 did not complain of foot pain and her feet were "normal." (AR  
9 179-209, 367-71.)

10 Third, the ALJ also properly gave the opinions less weight  
11 because they were inconsistent with each other despite being  
12 offered days apart. (AR 24); see 20 C.F.R. § 404.1527(d)(4)  
13 (explaining that more weight should be afforded to medical  
14 opinions that are consistent with the record as a whole). For  
15 example, Dr. Landrey opined that Plaintiff could stand for 30  
16 minutes at a time and Dr. Tran stated she could stand for only 15  
17 minutes (AR 456, 462); Dr. Tran opined that she could never lift  
18 or carry more than 10 pounds and Dr. Landrey stated she could do  
19 so occasionally (AR 457, 462); and Dr. Tran indicated that  
20 Plaintiff could not even walk one block, but Dr. Landrey opined  
21 that she needed to walk for 15 minutes every hour (AR 457, 461).

22 Fourth, the ALJ properly concluded that the opinions were  
23 inconsistent with Plaintiff's reported daily activities. (AR  
24 24.) Plaintiff testified that she was able to drive; take care  
25 of her six-year-old granddaughter, of whom she had sole custody;  
26 and occasionally grocery shop, cook, attend church, and read the  
27 Bible for three hours a day. (AR 37-38, 47-51.) The ALJ was  
28 entitled to determine that the ability to perform these

1 activities was inconsistent with the opinions of Drs. Landrey and  
2 Tran that, for example, Plaintiff could not walk, stand, or sit  
3 for any extended period of time. (AR 454-64.)

4 Fifth, the ALJ properly found that the opinions of Drs.  
5 Landrey and Tran were inconsistent with the conservative  
6 treatment recommended for Plaintiff's neck and feet. (AR 24);  
7 see Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir. 2001)  
8 (holding ALJ properly rejected opinion of treating physician who  
9 prescribed conservative treatment yet opined that claimant was  
10 disabled). For example, following her neck surgery, Plaintiff  
11 was prescribed pain medication and physical therapy, and in April  
12 2010, her treating neurologist, Dr. Rodriguez, opined that no  
13 further surgery was recommended and Plaintiff should continue  
14 with conservative treatment as needed for her pain. (AR 376-81,  
15 383, 385, 387, 393.) Additionally, as discussed above,  
16 Plaintiff's plantar fasciitis improved by January 2008. (AR 179-  
17 209.)

18 Sixth, the ALJ was entitled to credit the opinion of Dr.  
19 Sophon instead of Drs. Landrey and Tran because his opinion was  
20 supported by independent clinical findings and thus constituted  
21 substantial evidence upon which the ALJ could properly rely. See  
22 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001);  
23 Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995). Dr.  
24 Sophon reviewed Plaintiff's medical records and conducted a  
25 complete orthopedic examination of Plaintiff. (AR 367-73.) The  
26 ALJ also properly relied on the fact that the opinions of Drs.  
27 Landrey and Tran conflicted with the opinions of nonexamining  
28 physicians Drs. Bitonte and Laiken. (AR 25, 320-36, 363-66); see

1 Thomas, 278 F.3d at 957 ("The opinions of non-treating or non-  
2 examining physicians may also serve as substantial evidence when  
3 . . . consistent with independent clinical findings or other  
4 evidence."). Moreover, any conflict in the properly supported  
5 medical-opinion evidence was the sole province of the ALJ to  
6 resolve. See Andrews, 53 F.3d at 1041.

7 The ALJ also properly rejected Dr. Tran's opinion that  
8 Plaintiff's psychological condition affected her physical  
9 condition and that she was incapable of even low-stress jobs  
10 because Dr. Tran was not a specialist in psychology and because  
11 no evidence existed in the record that Plaintiff alleged having a  
12 mental impairment or received any mental health treatment. (AR  
13 24, 461); see 20 C.F.R. § 404.1527(c)(5) ("We generally give more  
14 weight to the opinion of a specialist about medical issues  
15 related to his or her area of specialty than to the opinion of a  
16 source who is not a specialist.").

17 Finally, Plaintiff argues that the ALJ erred in his RFC  
18 assessment because he did not consider the VE's testimony that  
19 supported a finding of disability. (J. Stip. at 24.) The VE  
20 testimony cited by Plaintiff, however, refers to hypotheticals  
21 posed to the VE that contained limitations opined by Drs. Landrey  
22 and Tran that, as discussed above, were properly rejected by the  
23 ALJ and thus not required to be included in Plaintiff's RFC.  
24 (See AR 58-59); Osenbrock v. Apfel, 240 F.3d 1157, 1164-65 (9th  
25 Cir. 2001) ("Nor was the ALJ bound to accept as true the  
26 restrictions set forth in the second hypothetical question if  
27 they were not supported by substantial evidence. An ALJ is free  
28 to accept or reject restrictions in a hypothetical question that

1 are not supported by substantial evidence."); Rollins, 261 F.3d  
2 at 857 ("[B]ecause the ALJ included all of the limitations that  
3 he found to exist, and because his findings were supported by  
4 substantial evidence, the ALJ did not err in omitting the other  
5 limitations that Rollins had claimed, but had failed to  
6 prove.").<sup>7</sup>

7 In sum, the ALJ's RFC assessment was supported by  
8 substantial evidence, and Plaintiff is not entitled to reversal  
9 on this claim.

10 B. The ALJ Did Not Err in His Step-Two Analysis

11 Plaintiff contends that the ALJ erred in his step-two  
12 assessment by failing to consider the severity of Plaintiff's  
13 lower-back injury with disc damage, right-shoulder impingement,  
14 weight, anxiety, and depression. (J. Stip. at 3-4, 10-12.)  
15 Reversal is not warranted on this basis because substantial

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17 <sup>7</sup> Elsewhere, Plaintiff makes the similar argument that the  
18 ALJ erred in his step-four determination because "the portion of  
19 the [VE] testimony that limited Plaintiff to standing and walking  
20 no more than two hours in an eight hour day should have been  
21 considered more thoroughly." (J. Stip. at 22; see also id. at 17-  
22 20.) Plaintiff also implies that limitations related to her  
23 alleged mental impairment should have been considered. (Id.)  
24 These limitations, however, were opined by Drs. Landrey and Tran  
25 (AR 457, 462), and, as discussed above, because the ALJ properly  
26 rejected both of those opinions, he was not required to consider  
27 them in his RFC assessment. See Batson, 359 F.3d at 1197. It was  
28 Plaintiff's burden at step four to prove that she is unable to  
return to her past relevant work, and she failed to do so. See  
Pinto v. Massanari, 249 F.3d 840, 845 (9th Cir. 2001). In making  
his step-four determination, the ALJ properly relied on the VE's  
testimony that a hypothetical person with Plaintiff's RFC could  
perform Plaintiff's past relevant work. (AR 25); see Bayliss, 427  
F.3d at 1218 ("A VE's recognized expertise provides the necessary  
foundation for his or her testimony," and "no additional foundation  
is required"). Therefore, Plaintiff is not entitled to reversal on  
this basis.

1 evidence in the record supports the ALJ's step-two determination.

2 At step two of the sequential evaluation process, a  
3 plaintiff has the burden to present evidence of medical signs,  
4 symptoms, and laboratory findings that establish a medically  
5 determinable physical or mental impairment that is severe and can  
6 be expected to result in death or last for a continuous period of  
7 at least 12 months. Ukolov v. Barnhart, 420 F.3d 1002, 1004-05  
8 (9th Cir. 2005) (citing 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D));<sup>8</sup>  
9 see 20 C.F.R. §§ 404.1520, 404.1509. Substantial evidence  
10 supports an ALJ's determination that a claimant is not disabled  
11 at step two when "there are no medical signs or laboratory  
12 findings to substantiate the existence of a medically  
13 determinable physical or mental impairment." Ukolov, 420 F.3d at  
14 1004-05 (citing SSR 96-4p). An impairment may never be found on  
15 the basis of the claimant's subjective symptoms alone. Id. at  
16 1005.

17 Step two is "a de minimis screening device [used] to dispose  
18 of groundless claims." Smolen, 80 F.3d at 1290. Applying the  
19 applicable standard of review to the requirements of step two, a  
20 court must determine whether an ALJ had substantial evidence to  
21 find that the medical evidence clearly established that the  
22 claimant did not have a medically severe impairment or  
23 combination of impairments. Webb v. Barnhart, 433 F.3d 683, 687  
24 (9th Cir. 2005); see also Yuckert v. Bowen, 841 F.2d 303, 306  
25 (9th Cir. 1988) ("Despite the deference usually accorded to the

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27 <sup>8</sup> A "medical sign" is "an anatomical, physiological, or  
28 psychological abnormality that can be shown by medically acceptable  
clinical diagnostic techniques." Ukolov, 420 F.3d at 1005.

1 Secretary's application of regulations, numerous appellate courts  
2 have imposed a narrow construction upon the severity regulation  
3 applied here."). An impairment or combination of impairments is  
4 "not severe" if the evidence established only a slight  
5 abnormality that had "no more than a minimal effect on an  
6 individual's ability to work." Webb, 433 F.3d at 686 (citation  
7 omitted).

8 1. Depression and anxiety

9 Plaintiff failed to meet her burden to present evidence of  
10 medical signs, symptoms, and laboratory findings that establish  
11 that her alleged depression and anxiety constituted medically  
12 determinable mental impairments. See 20 C.F.R. § 404.1508 ("A  
13 physical or mental impairment must be established by medical  
14 evidence consisting of signs, symptoms, and laboratory findings,  
15 not only by your statement of symptoms."). The only evidence  
16 Plaintiff cites in support of her contention that the ALJ failed  
17 to properly consider the severity of her depression and anxiety  
18 is Dr. Tran's statement in his physical RFC questionnaire that  
19 Plaintiff had been prescribed antidepressant and anxiety  
20 medications. (J. Stip. at 4, 12.) Apart from this brief  
21 reference, the record is devoid of any mental-health treatment  
22 notes or functional limitations opined by any medical  
23 professional resulting from Plaintiff's depression or anxiety.  
24 Thus, the logical inference is that even if Plaintiff did suffer  
25 from depression and anxiety, any symptoms were adequately  
26 controlled with medication. See 20 C.F.R. § 404.1529(c)(3)(iv)  
27 (ALJ may consider effectiveness of medication in evaluating  
28 severity and limiting effects of impairment); Warre v. Comm'r of

1 Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006)  
2 ("Impairments that can be controlled effectively with medication  
3 are not disabling for the purpose of determining eligibility for  
4 [Social Security] benefits."). Further, Plaintiff testified that  
5 the only impairments affecting her ability to work were related  
6 to her feet and neck; she never mentioned any symptoms resulting  
7 from depression or anxiety. (AR 32-56.) Accordingly,  
8 substantial evidence supports the ALJ's determination that  
9 Plaintiff's depression and anxiety did not constitute medically  
10 determinable impairments. (AR 24); see Ukolov, 420 F.3d at 1004-  
11 05.

## 12 2. Obesity

13 As a general rule, an ALJ must determine the effect of a  
14 claimant's obesity upon her other impairments and ability to  
15 work. Celaya v. Halter, 332 F.3d 1177, 1182 (9th Cir. 2003); see  
16 also SSR 02-1p, 2002 WL 34686281 (Sept. 12, 2002) (requiring an  
17 ALJ to consider the effects of obesity at several points in the  
18 five-step sequential evaluation). An ALJ must "evaluate each  
19 case based on the information in the case record," as obesity may  
20 or may not increase the severity or functional limitations of  
21 other impairments. SSR 02-1p, 2002 WL 34686281, at \*6.

22 A review of the record reveals that in the proceedings  
23 before the Commissioner, neither Plaintiff nor her attorney ever  
24 claimed obesity constituted a disabling impairment or otherwise  
25 resulted in any functional limitations. Rather, Plaintiff  
26 claimed to be disabled as a result of neck and foot impairments,  
27 and the ALJ found, at step two, that Plaintiff has severe neck  
28 and foot impairments. (AR 21, 64, 69.) Plaintiff presented no



1 evidence that her obesity exacerbated her other impairments,  
2 limited her functioning, or impaired her ability to work, whether  
3 alone or in combination with her other alleged impairments. The  
4 only medical evidence concerning Plaintiff's obesity was a  
5 statement from Dr. Sophon that Plaintiff was obese and an April  
6 5, 2005 treatment note indicating that Plaintiff's complaints of  
7 foot pain might be related to her weight; but neither Dr. Sophon  
8 nor any other doctor ever discussed any limitations resulting  
9 from her obesity. (AR 214, 369.) Given the lack of any medical  
10 evidence that Plaintiff's obesity exacerbated her impairments or  
11 resulted in any functional limitation, as well as the failure of  
12 Plaintiff, who was represented by counsel, to claim to be  
13 disabled based on obesity, whether as an impairment or a source  
14 of functional limitations, the ALJ's failure to address  
15 Plaintiff's obesity at step two does not require reversal. See  
16 Burch v. Barnhart, 400 F.3d 676, 682 (9th Cir. 2005) (finding no  
17 reversible error, notwithstanding ALJ's failure to consider  
18 obesity at step two, because, as in this case, there was little  
19 evidence that plaintiff's obesity exacerbated other impairments  
20 and plaintiff was represented by counsel).

21 3. Shoulder and back impairments

22 Even assuming there is sufficient evidence in the record to  
23 show that Plaintiff suffered from right-shoulder impingement and  
24 a lower-back injury, the existence of either of these conditions  
25 alone did not constitute a severe impairment if it did not  
26 prevent Plaintiff from working. See 20 C.F.R. § 404.1520(c)  
27 (severe impairment is one that "significantly limits [claimant's]  
28 physical or mental ability to do basic work activities").

1 Substantial evidence supports the ALJ's finding that Plaintiff's  
2 right-shoulder and low-back pain were not severe. With respect  
3 to the right shoulder, as the ALJ noted, while Plaintiff  
4 presented with right-shoulder pain in April 2008, by May 2008 she  
5 reported feeling "1000 times better after the cortisone  
6 injection." (AR 23, 423-24, 428.) There is no evidence in the  
7 record that Plaintiff required further treatment for her right  
8 shoulder or that any pain was not adequately controlled with  
9 medication. Moreover, regarding her low-back injury, while  
10 Plaintiff reported injuring her lower back in a fall in 1990, she  
11 continued to work until 2007. (AR 367); Osenbrock, 240 F.3d at  
12 1165-66 (ALJ properly considered fact that plaintiff worked six  
13 years after injury in determining his functional capacity). As  
14 discussed above, at the hearing Plaintiff testified that the only  
15 impairments limiting her ability to work resulted from her neck  
16 and feet issues. (AR 32-56.) Indeed, even Plaintiff's counsel  
17 conceded at the hearing that Plaintiff was "not really mentioning  
18 the back although there were some complaints of it[.]" (AR 60.)  
19 Finally, Plaintiff fails to cite any medical opinions containing  
20 functional limitations resulting from her right-shoulder or  
21 lower-back injuries. Based on the aforementioned evidence, the  
22 ALJ reasonably concluded that Plaintiff's right-shoulder  
23 impingement and low-back injury did not constitute severe  
24 impairments because they did not have more than a minimal effect  
25 on her ability to work.

26 In any event, even if the ALJ erred by finding Plaintiff's  
27 alleged shoulder and low-back impairments nonsevere, that error  
28 was harmless because he considered these impairments when

1 determining her RFC at step four. See Lewis v. Astrue, 498 F.3d  
2 909, 911 (9th Cir. 2007) (failure to address particular  
3 impairment at step two harmless if ALJ fully evaluated claimant's  
4 medical condition in later steps of sequential evaluation  
5 process); see also Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d  
6 1050, 1055 (9th Cir. 2006) (ALJ's error harmless when  
7 "inconsequential to the ultimate nondisability determination").  
8 Specifically, the ALJ properly accounted for any work-related  
9 impairments resulting from Plaintiff's shoulder and lower-back  
10 pain by limiting her to occasional shoulder/overhead reaching and  
11 postural activities and providing that she must be given normal  
12 breaks from sitting. (AR 22.)

13 Plaintiff is not entitled to remand on this ground.

14 C. The ALJ Did Not Err in Determining that Plaintiff's  
15 Condition Did Not Meet or Equal a Listing

16 Plaintiff contends that the ALJ "looked solely at Social  
17 Security listing 1.00." (J. Stip. at 12.) In particular,  
18 Plaintiff maintains that the ALJ failed to  
19 specify whether he was considering 1.02, 1.04 or  
20 any of the other listings. Further, in light of  
21 plaintiff's other alleged impairments, there are  
22 other listings that would come into play, including  
23 12.04 and 12.06.

24 (Id.)

25 1. Applicable law

26 At step three of the sequential disability-evaluation  
27 process, the ALJ must evaluate the claimant's impairments to see  
28 if they meet or medically equal any of the impairments listed in

1 the Listings. See 20 C.F.R § 404.1520(d); Tackett v. Apfel, 180  
2 F.3d 1094, 1098 (9th Cir. 1999). The claimant has the initial  
3 burden of proving that an impairment meets or equals a Listing.  
4 See Sullivan v. Zebley, 493 U.S. 521, 530-33, 110 S. Ct. 885,  
5 891-92, 107 L. Ed. 2d 967 (1990). "To meet a listed impairment,  
6 a claimant must establish that he or she meets each  
7 characteristic of a listed impairment relevant to his or her  
8 claim." Tackett, 180 F.3d at 1099. "To equal a listed  
9 impairment, a claimant must establish symptoms, signs and  
10 laboratory findings 'at least equal in severity and duration' to  
11 the characteristics of a relevant listed impairment, or, if a  
12 claimant's impairment is not listed, then to the listed  
13 impairment 'most like' the claimant's impairment." Id. (citing  
14 20 C.F.R. § 404.1526). Medical equivalence, moreover, "must be  
15 based on medical findings"; "[a] generalized assertion of  
16 functional problems is not enough to establish disability at step  
17 three." Id. at 1100 (citing 20 C.F.R. § 404.1526).

18 An ALJ "must evaluate the relevant evidence before  
19 concluding that a claimant's impairments do not meet or equal a  
20 listed impairment." Lewis v. Apfel, 236 F.3d 503, 512 (9th Cir.  
21 2001). The ALJ, however, need not "state why a claimant failed  
22 to satisfy every different section of the listing of  
23 impairments." Gonzalez v. Sullivan, 914 F.2d 1197, 1201 (9th  
24 Cir. 1990) (finding ALJ did not err in failing to state what  
25 evidence supported conclusion that, or discuss why, claimant's  
26 impairments did not satisfy a Listing). Moreover, the ALJ "is  
27 not required to discuss the combined effects of a claimant's  
28 impairments or compare them to any listing in an equivalency

1 determination, unless the claimant presents evidence in an effort  
2 to establish equivalence." Burch, 400 F.3d at 683 (citing Lewis,  
3 236 F.3d at 514).

4 2. Analysis

5 The ALJ's step-three determination is supported by  
6 substantial evidence. Plaintiff argues that the ALJ erred at  
7 step three by failing to identify which Listing he was  
8 considering or explain why he concluded that Plaintiff's  
9 impairments did not meet or equal a Listing. (J. Stip. at 12,  
10 17.) Although it is true that the ALJ found only that Plaintiff  
11 "does not have an impairment or combination of impairments that  
12 meets or medically equals one of the listed impairments in 20 CFR  
13 Part 404, Subpart P, Appendix 1" and that "[n]o treating or  
14 examining physician has recorded findings equivalent in severity  
15 to the criteria of any listed impairment, including Listing 1.00,  
16 nor does the evidence show medical findings that are the same or  
17 equivalent to those of any listed impairment," without  
18 specifically stating what evidence supported his conclusion (AR  
19 21-22), elsewhere in the decision he dedicated three  
20 single-spaced pages to summarizing and analyzing the medical  
21 evidence and Plaintiff's testimony (AR 22-25). Because those  
22 findings were sufficient to support the ALJ's step-three  
23 conclusion that Plaintiff's impairments did not meet or equal a  
24 Listing, he did not err. See Gonzalez, 914 F.2d at 1201  
25 (rejecting claimant's argument that ALJ erred by failing to  
26 discuss why he did not satisfy Listing because four-page  
27 "evaluation of the evidence" was "an adequate statement of the  
28 foundations on which the ultimate factual conclusions are based"

1 (internal quotation marks omitted)); see also Lewis, 236 F.3d at  
2 513 (ALJ must discuss and evaluate evidence that supports  
3 step-three conclusion but need not do so under specific heading).

4 Moreover, the ALJ "is not required to discuss the combined  
5 effects of a claimant's impairments or compare them to any  
6 listing in an equivalency determination, unless the claimant  
7 presents evidence in an effort to establish equivalence." Burch,  
8 400 F.3d at 683 (citing Lewis, 236 F.3d at 514). Here, Plaintiff  
9 and her counsel never asked the ALJ to consider any Listings in  
10 the 12 series, and Plaintiff has failed to point to any credited  
11 evidence of functional limitations that would have affected the  
12 ALJ's analysis, nor has she offered any plausible theory of how  
13 the combination of her impairments equaled a Listing. The ALJ  
14 therefore did not commit reversible error by failing to make  
15 additional findings at step three.

16 D. The ALJ Did Not Err in Assessing Plaintiff's  
17 Credibility

18 Plaintiff argues that the ALJ failed to provide clear and  
19 convincing reasons for discounting her credibility. (J. Stip. at  
20 36-38, 44-45.) Because the ALJ did provide clear and convincing  
21 reasons supporting his evaluation of Plaintiff's testimony and  
22 those reasons were supported by substantial evidence in the  
23 record, reversal is not warranted on this basis.

24 1. Applicable law

25 An ALJ's assessment of pain severity and claimant  
26 credibility is entitled to "great weight." See Weetman v.  
27 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779  
28 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to

1 believe every allegation of disabling pain, or else disability  
2 benefits would be available for the asking, a result plainly  
3 contrary to 42 U.S.C. § 423(d)(5)(A).” Molina v. Astrue, 674  
4 F.3d 1104, 1122 (9th Cir. 2012). In evaluating a claimant’s  
5 subjective symptom testimony, the ALJ engages in a two-step  
6 analysis. See Lingenfelter, 504 F.3d at 1035-36. “First, the  
7 ALJ must determine whether the claimant has presented objective  
8 medical evidence of an underlying impairment [that] could  
9 reasonably be expected to produce the pain or other symptoms  
10 alleged.” Id. at 1036 (internal quotation marks omitted). If  
11 such objective medical evidence exists, the ALJ may not reject a  
12 claimant’s testimony “simply because there is no showing that the  
13 impairment can reasonably produce the *degree* of symptom alleged.”  
14 Smolen, 80 F.3d at 1282 (emphasis in original). When the ALJ  
15 finds a claimant’s subjective complaints not credible, the ALJ  
16 must make specific findings that support the conclusion. See  
17 Berry v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent  
18 affirmative evidence of malingering, those findings must provide  
19 “clear and convincing” reasons for rejecting the claimant’s  
20 testimony. Lester, 81 F.3d at 834. If the ALJ’s credibility  
21 finding is supported by substantial evidence in the record, the  
22 reviewing court “may not engage in second-guessing.” Thomas, 278  
23 F.3d at 959.

24           2. Relevant facts

25           At the hearing, Plaintiff testified that she stopped working  
26 at Costco in January 2007 because of symptoms related to  
27 bilateral plantar fasciitis. (AR 33.) Plaintiff acknowledged  
28 that her job duties at Costco likely led to her condition but

1 stated that she did not file a workers' compensation claim. (AR  
2 33-34.) When the ALJ inquired why not, Plaintiff initially  
3 responded that she was hoping to return to Costco because it was  
4 a good employer but then said "there wasn't any reason" she  
5 didn't file a claim and that "[t]o be honest," she was on state  
6 disability at the time so she was seen by other doctors. (AR 33-  
7 35.) She stated that since her state disability had run out, she  
8 had been supported by her husband and earned some money caring  
9 for her six-year-old granddaughter, of whom she had sole custody.  
10 (AR 37-38.) Plaintiff explained that she stopped working because  
11 of the pain in her feet but developed pain in her neck in March  
12 2008, after she had stopped working. (AR 38-39.) She explained  
13 that her neck was currently the "bigger obstacle" to her working.  
14 (AR 45.) She testified that in March 2008, she "woke up and  
15 [she] felt like [she] slept on her neck wrong so [she] didn't  
16 know there was a problem." (AR 39.) She further indicated that  
17 she had injured her neck in 2001, for which she filed a workers'  
18 compensation claim, but the doctor who examined her in March 2008  
19 did not feel it was related to that injury. (Id.) According to  
20 Plaintiff, she would have been able to perform a "seated job"  
21 between January 2007 and March 2008 but could not presently work  
22 because her neck was in "constant acute pain." (AR 39-40.)  
23 Plaintiff also stated that she was initially treated  
24 conservatively for her neck pain but had neck surgery in October  
25 2008 that provided "immediate improvement but then it, the, the  
26 symptoms started coming back." (AR 40.) She explained that she  
27 had two additional herniated discs, "the C3 and 4 and C5 and 6."  
28 (Id.) In addition, Plaintiff testified that her neck pain had



1 gotten worse since the surgery and "goes down into the middle of  
2 [her] spine into her shoulder blades up into the skull of [her]  
3 head." (AR 41.) She acknowledged that her treating neurologist  
4 was aware of her two herniated discs, but only conservative  
5 treatment, consisting of "[p]hysical therapy, massages, [and]  
6 pain medication," had been recommended. (Id.) Plaintiff did  
7 note that her treating neurologist suggested more surgery might  
8 be a possibility but also said that she would be "exchanging one  
9 pain for another." (Id.) She indicated that her neurologist  
10 suggested she go to a specialist for a Botox injection to treat  
11 her neck pain but that her insurance would not cover it. (AR  
12 46.)

13 Plaintiff testified that what she did on a daily basis was  
14 dictated by her pain, for which she took a pain medication, an  
15 antiinflammatory, and a muscle relaxer and used a pain patch.  
16 (AR 42-43.) She indicated that the pain medication sometimes  
17 caused the pain to "subside," but that at other times she must do  
18 additional care, like "laying on a heating pad or ice packs"  
19 several times a day as needed. (AR 43.) She had trouble falling  
20 and staying asleep and woke three to four times a night, which  
21 caused her to need naps during the day. (AR 44.) She estimated  
22 that since March 2008, she spent at least 50% of the day lying  
23 down. (AR 48.) Plaintiff explained that she did not do any  
24 activities away from home except go to medical appointments, but  
25 she was able to drive and did drive her granddaughter to school.  
26 (AR 47.) She later admitted that she also occasionally grocery  
27 shopped and attended church. (AR 48, 51.) Finally, Plaintiff  
28 also stated that she cooked, got her granddaughter ready in the

1 morning and drove her to school, and read the Bible for about  
2 three hours a day. (AR 49-51.)

3 3. Analysis

4 The ALJ evaluated Plaintiff's credibility as follows:

5 The claimant's testimony as well as the statements in the  
6 exhibits are only credible to the extent she is able to  
7 perform the residual functional capacity herein. While  
8 the claimant alleges she is unable to perform work  
9 activity, her records do not support this allegation.

10 The claimant stopped working due to plantar fasciitis  
11 that was a work related injury but she never filed a  
12 workers' compensation claim. Instead, she did not go  
13 back to work. A year later, she injured her neck which  
14 ultimately required surgery. Currently she drives, takes  
15 care of a 6 year old granddaughter, does some grocery  
16 shopping, cooks, attends church, and reads the bible for  
17 about 3 hours a day. She testified her doctor wants to  
18 fuse the level above and below her neck but that is  
19 supported [sic] by her medical records.

20 (AR 23.)

21 Reversal is not warranted based on the ALJ's alleged failure  
22 to make proper credibility findings or properly consider  
23 Plaintiff's subjective symptoms. The ALJ partially credited  
24 Plaintiff's allegations in assessing an RFC more restrictive than  
25 that opined by Dr. Sophon. (AR 22, 25.) To the extent the ALJ  
26 did reject Plaintiff's allegations, he provided clear and  
27 convincing reasons for doing so. As the ALJ noted, Plaintiff's  
28 treatment records "show substantial improvement from March 1,

1 2008 to the present." (AR 23.) Her plantar fasciitis improved  
2 after January 2008, no evidence showed she needed treatment after  
3 that time for foot pain, and her feet were normal during her  
4 January 2010 consultative exam. (AR 179-209, 367-71.) In  
5 addition, her neck pain improved after her October 2008 surgery;  
6 the most recent record from Dr. Rodriguez, her treating  
7 neurologist, in April 2010 recommended only conservative  
8 treatment and no future surgeries. (AR 376-77.) Based on this  
9 evidence, the ALJ was entitled to discount Plaintiff's subjective  
10 testimony to the extent it conflicted with the medical record.  
11 See Carmickle, 533 F.3d at 1161 ("Contradiction with the medical  
12 record is a sufficient basis for rejecting the claimant's  
13 subjective testimony."); Lingenfelter, 504 F.3d at 1040 (in  
14 determining credibility, ALJ may consider "whether the alleged  
15 symptoms are consistent with the medical evidence"); Burch, 400  
16 F.3d at 681 ("Although lack of medical evidence cannot form the  
17 sole basis for discounting pain testimony, it is a factor that  
18 the ALJ can consider in his credibility analysis."); Kennelly v.  
19 Astrue, 313 F. App'x 977, 979 (9th Cir. 2009) (same); Tommasetti  
20 v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008) (ALJ may infer  
21 that claimant's "response to conservative treatment undermines  
22 [claimant's] reports regarding the disabling nature of his  
23 pain").

24 The ALJ also properly rejected Plaintiff's subjective  
25 allegations on the basis that she did not file a workers'  
26 compensation claim after leaving work in January 2007 because of  
27 plantar fasciitis, a work-related injury. (AR 23.) While  
28 Plaintiff initially testified that she did not file a claim

1 because she hoped to return to work, she then stated that there  
2 was no reason she did not file a claim and conceded that from  
3 January 2007 to March 2008, she would have been able to perform a  
4 "seated job." (AR 33-34, 45, 47, 53-54.) The ALJ reasonably  
5 considered Plaintiff's failure to file a claim as undermining her  
6 allegations that she was unable to work. See Turner v. Comm'r of  
7 Soc. Sec., 613 F.3d 1217, 1224 (9th Cir. 2010) (in evaluating  
8 plaintiff's testimony, the ALJ may use "'ordinary techniques of  
9 credibility evaluation'" (quoting Smolen, 80 F.3d at 1284)).

10 Moreover, as the ALJ noted, Plaintiff admitted that she was  
11 able to do a wide variety of daily activities, including driving,  
12 taking care of her six-year-old granddaughter, occasional grocery  
13 shopping, cooking, attending church, and reading the Bible about  
14 three hours a day. (AR 23, 42-51.) That Plaintiff's allegations  
15 of disabling pain were inconsistent with her daily activities was  
16 a valid reason for the ALJ to discount her testimony. See Bray  
17 v. Comm'r of Soc. Sec. Admin., 554 F.3d 1219, 1227 (9th Cir.  
18 2009) (ALJ properly discounted claimant's testimony because "she  
19 leads an active lifestyle, including cleaning, cooking, walking  
20 her dogs, and driving to appointments"); Molina, 674 F.3d at 1113  
21 ("Even where [claimant's] activities suggest some difficulty  
22 functioning, they may be grounds for discrediting the claimant's  
23 testimony to the extent that they contradict claims of a totally  
24 debilitating impairment.").

25 Because the ALJ gave clear and convincing reasons for his  
26 credibility finding and those reasons were supported by  
27 substantial evidence, the Court "may not engage in  
28 second-guessing" the ALJ. Thomas, 278 F.3d at 959 (citation

1 omitted). Plaintiff is not entitled to reversal on this claim.

2 E. The ALJ Did Not Err in Failing to Consider Whether  
3 Plaintiff Was Disabled Under the Medical-Vocational  
4 Guidelines

5 Plaintiff contends the ALJ's RFC assessment that Plaintiff  
6 could perform a limited range of light work was "essentially" a  
7 finding that she could perform sedentary work and thus the ALJ  
8 should have determined that Plaintiff was disabled under the  
9 Medical-Vocational Guidelines ("the Grids"). See Hoopai v.  
10 Astrue, 499 F.3d 1071, 1075 (9th Cir. 2007) (explaining that  
11 Grids are used to assist in step-five determination of whether  
12 significant number of jobs exist in national economy that  
13 claimant can perform); 20 C.F.R. § 404.1569. Plaintiff's  
14 contention lacks merit. Because the ALJ properly found, at step  
15 four, that Plaintiff could perform her past relevant work, he was  
16 not required to go onto the next step and consider whether  
17 Plaintiff was disabled under the Grids. See 20 C.F.R.  
18 §§ 404.1520(f) (explaining that the ALJ's inquiry is complete if  
19 he determines at step four that plaintiff is not disabled);  
20 404.1560(b)(3) ("If we find that you have the residual functional  
21 capacity to do your past relevant work, we will determine that  
22 you can still do your past work and are not disabled. We will  
23 not consider your vocational factors of age, education, and work  
24 experience or whether your past relevant work exists in  
25 significant numbers in the national economy."). Plaintiff also  
26 argues that the ALJ should have applied the Grids because  
27 Plaintiff's past work "is best described as a 'composite job.'" (J. Stip. at 36.) But the VE testified that Plaintiff's job at

1 Costco was "really two different jobs" and said that Plaintiff  
2 could perform one of them. (AR 56-57.) This is in fact exactly  
3 like the case cited by Plaintiff, Castillo v. Astrue, No. CV 10-  
4 2584 JC, 2010 WL 4916608, at \*4 n.3 (C.D. Cal. Nov. 3, 2010), in  
5 which the Court found an argument almost identical to Plaintiff's  
6 "unavailing." Moreover, because the ALJ properly rejected the  
7 opinions of Drs. Landrey and Tran, the ALJ's step-four finding  
8 was proper regardless of whether Plaintiff's past job could be  
9 characterized as a composite job. Therefore, Plaintiff is not  
10 entitled to reversal on this basis.

11 **VII. CONCLUSION**

12 Consistent with the foregoing, and pursuant to sentence four  
13 of 42 U.S.C. § 405(g),<sup>9</sup> IT IS ORDERED that judgment be entered  
14 AFFIRMING the decision of the Commissioner and dismissing this  
15 action with prejudice. IT IS FURTHER ORDERED that the Clerk  
16 serve copies of this Order and the Judgment on counsel for both  
17 parties.

18  
19 DATED: June 5, 2013

20   
JEAN ROSENBLUTH  
U.S. Magistrate Judge

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24  
25  
26 \_\_\_\_\_  
27 <sup>9</sup> This sentence provides: "The [district] court shall have  
28 power to enter, upon the pleadings and transcript of the record, a  
judgment affirming, modifying, or reversing the decision of the  
Commissioner of Social Security, with or without remanding the  
cause for a rehearing."