



1 159].<sup>2</sup> In a November 9, 2010 written hearing decision that constitutes the final decision of the  
2 Commissioner, an administrative law judge (“ALJ”) found that plaintiff had severe impairments consisting  
3 of rheumatoid arthritis, bilateral carpal tunnel syndrome, and fibromyalgia. [AR 17, 21]. The ALJ further  
4 found that plaintiff retained the residual functional capacity (“RFC”) to perform less than a full range of  
5 light work. [AR 17]. Specifically, the ALJ determined that plaintiff can lift and carry ten pounds frequently  
6 and twenty pounds occasionally with frequent fine manipulation with her hands bilaterally. [AR 17]. Based  
7 on the testimony of a vocational expert, the ALJ concluded that plaintiff was not disabled because her RFC  
8 did not preclude her from performing her past relevant work as a hairstylist and manager of a beauty salon.  
9 [AR 20-21].

### 10 **Standard of Review**

11 The Commissioner’s denial of benefits should be disturbed only if it is not supported by substantial  
12 evidence or is based on legal error. Stout v. Comm’r Social Sec. Admin., 454 F.3d 1050, 1054 (9th Cir.  
13 2006); Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002). “Substantial evidence” means “more than  
14 a mere scintilla, but less than a preponderance.” Bayliss v. Barnhart, 427 F.3d 1211, 1214 n.1 (9th Cir.  
15 2005). “It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”  
16 Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)(internal quotation marks omitted). The court is  
17 required to review the record as a whole and to consider evidence detracting from the decision as well as  
18 evidence supporting the decision. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006);  
19 Verduzco v. Apfel, 188 F.3d 1087, 1089 (9th Cir. 1999). “Where the evidence is susceptible to more than  
20 one rational interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”  
21 Thomas, 278 F.3d at 954 (citing Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.  
22 1999)).

### 23 **Discussion**

#### 24 **Medical opinion evidence**

25 Plaintiff contends that the ALJ’s evaluation of the medical evidence is not supported by substantial  
26 evidence because he improperly adopted the opinions of examining physician Khyber Zaffarkhan, D.O.,  
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28 <sup>2</sup> It appears from the record that plaintiff later amended her alleged onset date to June 1, 2008.  
[See AR 14, 29-30, 53-54].

1 and the state agency non-examining physicians in assessing plaintiff's RFC. [JS 4-6]. Plaintiff further  
2 maintains that the ALJ also failed to provide specific and legitimate reasons for rejecting the opinion of  
3 plaintiff's treating rheumatologist Joanne Kang, M.D. [JS 6-7].

4 The ALJ must provide clear and convincing reasons, supported by substantial evidence in the record,  
5 for rejecting an uncontroverted treating source opinion. If contradicted by that of another doctor, a treating  
6 or examining source opinion may be rejected for specific and legitimate reasons that are based on substantial  
7 evidence in the record. Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004);  
8 Tonapetyan v. Halter, 242 F.3d 1144, 1148-1149 (9th Cir. 2001); Lester v. Chater, 81 F.3d 821, 830-831  
9 (9th Cir. 1995). "The opinion of a nonexamining physician cannot by itself constitute substantial evidence  
10 that justifies the rejection of the opinion of either an examining physician or a treating physician." Lester,  
11 81 F.3d at 831. On the other hand, "the findings of a nontreating, nonexamining physician can amount to  
12 substantial evidence, so long as other evidence in the record supports those findings." Saelee v. Chater,  
13 94 F.3d 520, 522 (9th Cir. 1996) (per curiam), cert. denied, 519 U.S. 1113 (1997).

14 On February 7, 2009, plaintiff underwent a complete orthopedic consultation with Dr. Zaffarkhan  
15 at the Commissioner's request. [AR 216-221]. Dr. Zaffarkhan took a history and conducted an orthopedic  
16 evaluation, but did not review any medical records. [AR 216-220]. He diagnosed bilateral carpal tunnel  
17 syndrome and hypertensive urgency. [AR 220]. Dr. Zaffarkhan opined that plaintiff could lift and carry  
18 20 pounds occasionally and 10 pounds frequently, and that she could frequently do fine manipulation with  
19 both hands. [AR 221].

20 On March 9, 2009, a nonexamining state agency physician completed a physical RFC assessment  
21 form and found plaintiff capable of light work. [AR 223-230]. This determination was affirmed by another  
22 nonexamining physician on May 5, 2009. [AR 231-232].

23 On August 20, 2010, Dr. Kang, plaintiff's treating physician, wrote the following on a prescription  
24 order: "[Patient] has a diagnosis of Rheumatoid arthritis. It would be very difficult for her to work as a  
25 hairdresser. Please consider permanent disability for Ms. Chavez." [AR 352].

26 In assessing plaintiff's RFC, the ALJ said that she gave "great weight" to Dr. Zaffarkhan's opinion  
27 and "weight" to the nonexamining physicians opinions. [AR 20]. She said that she gave "little weight" to  
28 Dr. Kang's "disability statement[.]" [AR 20]. Specifically, the ALJ determined that because Dr. Kang gave

1 an opinion on an issue reserved to the Commissioner, her opinion was not entitled to controlling weight or  
2 any special significance. [AR 20]. Additionally, the ALJ concluded that Dr. Kang’s statement was “not  
3 supported by the objective medical evidence, and [did] not provide conditions, symptoms, or functional  
4 limitations of” plaintiff. [AR 20].

5 The ALJ provided specific and legitimate reasons for rejecting Dr. Kang’s conclusory statement that  
6 it would be very difficult for plaintiff to work as a hairdresser. [See AR 20, 352]. As an initial matter, the  
7 ALJ properly concluded that whether plaintiff is disabled and unable to work is an issue reserved to the  
8 Commissioner. [AR 20]. See 20 C.F.R. §§ 404.1527(d)(1)-(3); 416.927(d)(1)-(3). The ALJ also properly  
9 rejected Dr. Kang’s statement because it was unsupported by the objective medical evidence and did not  
10 contain any details regarding plaintiff’s symptoms or functional limitations. [AR 20]. Although plaintiff  
11 concedes that Dr. Kang’s statement failed “to specify symptoms or specific functional limitations,” plaintiff  
12 maintains that “implicit in her note is a common sense interpretation that Dr. Kang was of the opinion that  
13 Plaintiff’s upper extremities would pose a problem for her performing the work as a hairdresser due to her  
14 rheumatoid arthritis condition.” [JS 6]. The ALJ, however, is free to reject a treating physician’s opinion  
15 that is conclusory and unsupported by the medical evidence. See Tonapetyan, 242 F.3d at 1149 (holding  
16 that the ALJ properly rejected treating physician’s opinion that was “conclusory and brief and unsupported  
17 by clinical findings”). Plaintiff also argues that Dr. Kang’s opinion was entitled to significant weight  
18 because she specializes in rheumatology. [JS 6]. While a physician’s area of expertise should be considered  
19 in determining the weight afforded to that medical opinion, it is only one of the factors considered and is  
20 not determinative. See 20 C.F.R. §§ 404.1527(c)(1)-(6); 416.927(c)(1)-(6).

21 Moreover, the contrary opinion of Dr. Zaffarkhan constitutes substantial evidence supporting the  
22 ALJ’s findings regarding plaintiff’s functional limitations. Dr. Zaffarkhan’s opinion about plaintiff’s  
23 functional limitations was supported by his detailed findings resulting from a complete orthopedic  
24 examination of plaintiff. [See AR 216-221]. Plaintiff argues that Dr. Zaffarkhan’s opinion is entitled to no  
25 weight because he did not review plaintiff’s medical records. [JS 4-5]. That argument lacks merit. Dr.  
26 Zaffarkhan’s “opinion alone constitutes substantial evidence, because it rests on his own independent  
27 examination of [plaintiff].” Tonapetyan, 242 F.3d at 1149 (citations omitted). [See AR 216-221]. The non-  
28 examining physicians’ opinions constitute additional substantial evidence supporting the ALJ’s RFC

1 assessment because they are consistent with Dr. Zaffarkhan’s opinion and the objective medical evidence  
2 in the record. [See AR 223-229]. See Saelee, 94 F.3d at 522.

3 Accordingly, the ALJ provided legally sufficient reasons for her evaluation of the medical source  
4 opinions, and those reasons are supported by substantial evidence in the record.

5 **Credibility finding**

6 Plaintiff contends that the ALJ failed to properly consider plaintiff’s testimony about her subjective  
7 symptoms. [JS 11-14].

8 If the record contains objective evidence of an underlying physical or mental impairment that is  
9 reasonably likely to be the source of a claimant’s subjective symptoms, the ALJ is required to consider all  
10 subjective testimony as to the severity of the symptoms. Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir.  
11 2004); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en banc); see also 20 C.F.R. §§ 404.1529(a);  
12 416.929(a) (explaining how pain and other symptoms are evaluated). Absent affirmative evidence of  
13 malingering, the ALJ must then provide specific, clear and convincing reasons for rejecting a claimant’s  
14 subjective complaints. Vasquez v. Astrue, 547 F.3d 1101, 1105 (9th Cir. 2008); Carmickle v. Comm’r, Soc.  
15 Sec. Admin., 533 F.3d 1155, 1160-1161 (9th Cir. 2008); Moisa, 367 F.3d at 885. “In reaching a credibility  
16 determination, an ALJ may weigh inconsistencies between the claimant’s testimony and his or her conduct,  
17 daily activities, and work record, among other factors.” Bray v. Comm’r of Social Sec. Admin., 554 F.3d  
18 1219, 1221, 1227 (9th Cir. 2009); Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir.1997). The ALJ’s  
19 credibility findings “must be sufficiently specific to allow a reviewing court to conclude the ALJ rejected  
20 the claimant’s testimony on permissible grounds and did not arbitrarily discredit the claimant’s testimony.”  
21 Moisa, 367 F.3d at 885. If the ALJ’s interpretation of the claimant’s testimony is reasonable and is  
22 supported by substantial evidence, it is not the court’s role to “second-guess” it. Rollins v. Massanari, 261  
23 F.3d 853, 857 (9th Cir. 2001).

24 At the hearing, plaintiff testified that she is unable to work because she “drops things from [her]  
25 hands, [and doesn’t] have any strength in them.” [AR 31]. She also explained that she has a driver’s  
26 license, but drives “[v]ery little” like to a doctor’s appointment or “somewhere close.” [AR 32]. Plaintiff  
27 described her “average day” as waking up slowly and then doing chores “little by little” including mopping,  
28 sweeping, and cleaning the bathroom. [AR 35]. Plaintiff stated that she can care for herself, but sometimes

1 needs help getting in and out of the bathtub. [AR 35]. Plaintiff further testified that her son helps her with  
2 the cooking and cleaning, but that she sometimes cooks dinner and does the dishes. [AR 36]. Plaintiff also  
3 goes to church, takes short walks, and does the grocery shopping with her husband. [AR 36-37]. According  
4 to plaintiff, she needs to take naps during the day because the pills for her arthritis make her sleepy. [AR  
5 37-38]. Finally, plaintiff indicated that she has poor eyesight and trouble hearing. [AR 38].

6 The ALJ concluded that plaintiff's testimony about her subjective symptoms was not fully credible.  
7 [AR 18-19]. Specifically, the ALJ found that plaintiff retained the RFC to lift and carry ten pounds  
8 frequently and twenty pounds occasionally and also can perform frequent fine manipulation with both  
9 hands. [AR 17].

10 The ALJ provided clear and convincing reasons supporting her credibility finding. The ALJ found  
11 that plaintiff made inconsistent statements concerning her work history and disability status. [AR 18].  
12 Plaintiff initially alleged that her disability began on October 1, 2006. [AR 18, 151]. Plaintiff subsequently  
13 alleged that she became unable to work due to her impairments on June 1, 2008, but on the same form she  
14 reported that she stopped working on June 1, 2007 due to "constant pain in [her] hands." [AR 18, 169].  
15 During the hearing in August 2010, plaintiff testified that she stopped working on January 15, 2008, but then  
16 said that she last worked in August 2008.<sup>3</sup> [AR 18, 29-30]. The ALJ asked plaintiff about her earnings from  
17 2009. Plaintiff testified that she had owned a beauty salon with two chairs, and that she rented one of the  
18 chairs to another hair stylist for six months in 2009. [AR 18, 29-31]. Asked why she stopped renting the  
19 chair, plaintiff testified that the other hair stylist "went to Mexico and then the business was low so since  
20 I couldn't handle it anymore I closed." [AR 18, 30-31]. The ALJ concluded that plaintiff's testimony  
21 showed that she engaged in substantial gainful activity through August 2009, and that plaintiff's inconsistent  
22 statements undermined the credibility of her subjective complaints. [AR 16, 18].

23 While plaintiff concedes that she offered inconsistent statements about the timing and duration of  
24 her work, she maintains that these statements "have nothing to do with her statements regarding her  
25 symptoms and limitations." [JS 11]. The ALJ, however, properly considered plaintiff's inconsistent  
26 statements as one factor in her credibility determination because the fact that plaintiff was not completely  
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28 <sup>3</sup> Plaintiff was represented during the hearing by her attorney of record in this case.

1 forthcoming and consistent in her statement regarding her work history and disability status is relevant to  
2 assessing her credibility in general. See Bunnell, 947 F.2d at 346 (“An adjudicator may also use ordinary  
3 techniques of credibility evaluation to test a claimant’s credibility. So long as the adjudicator makes  
4 specific findings that are supported by the record, the adjudicator may discredit the claimant’s allegations  
5 based on inconsistencies in the testimony or on relevant character evidence.”) (internal quotation marks and  
6 citation omitted); Tommasetti v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008) (holding that the ALJ can use  
7 “ordinary techniques of credibility evaluation”). Moreover, the ALJ noted that although plaintiff “reported  
8 she was unable to work in 2008 . . . evidence indicates the [plaintiff] worked in 2009 and the [plaintiff] only  
9 closed her shop after the person renting her chair moved to Mexico and business was slow.” [AR 18]. See  
10 20 C.F.R. §§ 404.1529(a) & (c)(3); 416.929(a) & (c)(3) (stating that the Commissioner will consider a  
11 claimant’s efforts to work and prior work record in evaluating symptoms).

12 The ALJ also found that plaintiff’s daily activities did not support a finding that her subjective  
13 symptoms were disabling. [AR 18]. In particular, the ALJ pointed to plaintiff’s testimony that she can  
14 perform household chores, cook, do the dishes, and drive to doctor’s appointments. [AR 18, 32-38].  
15 Plaintiff’s testimony about her daily activities was one factor the ALJ could consider, particularly in regard  
16 to whether plaintiff could use her hands frequently. [AR 18]. See Valentine v. Comm’r, Soc. Sec. Admin.,  
17 574 F.3d 685, 693 (9th Cir. 2009) (holding that the ALJ properly considered plaintiff’s activities in rejecting  
18 the claimant’s credibility where the record demonstrated that the claimant had greater capacity than he  
19 alleged).

20 Finally, the ALJ properly considered, as one factor among others in her credibility determination,  
21 the lack of objective medical evidence corroborating the alleged severity of plaintiff’s subjective symptoms.  
22 [AR 19-20]. See Burch, 400 F.3d at 681 (“Although lack of medical evidence cannot form the sole basis  
23 for discounting pain testimony, it is a factor that the ALJ can consider in his credibility analysis.”).

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25 The ALJ articulated clear and convincing reasons, based on substantial evidence, for rejecting the  
26 alleged severity of plaintiff’s subjective complaints.

27 **Vocational expert testimony**

28 Plaintiff contends that the ALJ erred in relying on the vocational expert’s testimony to support her

1 step four finding that plaintiff was capable of performing her past relevant work as a hairstylist and manager  
2 of a beauty salon. [JS 18-19].

3 A social security disability claimant bears the burden of proving that she cannot perform either the  
4 “actual functional demands and job duties of a particular past relevant job” or the “functional demands and  
5 job duties of the occupation as generally required by employers throughout the national economy.” Pinto  
6 v. Massanari, 249 F.3d 840, 845 (9th Cir. 2001) (quoting SSR 82-62, 1982 WL 31386); see also Burch, 400  
7 F.3d at 679; Villa v. Heckler, 797 F.2d 794, 798 (9th Cir. 1986). The ALJ’s obligation is “to make the  
8 requisite factual findings to support” the conclusion that the claimant can perform past relevant work. “This  
9 is done by looking at the residual functional capacity and the physical and mental demands of the claimant’s  
10 past work.” Pinto, 249 F.3d at 844-845 (quoting 20 C.F.R. §§ 404.1520(e) and 416.920(e)). Information  
11 from the Dictionary of Occupational Titles (“DOT”), or the testimony of a vocational specialist, may be  
12 used to ascertain the demands of an occupation as ordinarily required by employers throughout the national  
13 economy at steps four and five of the sequential evaluation procedure. See SSR 00-4p, 2000 WL 1898704,  
14 at \*2 (“In making disability determinations, we rely primarily on the DOT (including its companion  
15 publication, the SCO) for information about the requirements of work in the national economy. We use  
16 these publications at steps 4 and 5 of the sequential evaluation process. We may also use VEs and VSs at  
17 these steps to resolve complex vocational issues.”) (footnote omitted).

18 Plaintiff maintains that the ALJ erred in her step four finding because Dr. Kang’s opinion established  
19 that plaintiff is unable to frequently use her upper extremities, and both of plaintiff’s past relevant  
20 occupations require frequent reaching, handling, and fingering. [JS 19]. As discussed above, the ALJ’s  
21 RFC assessment is supported by substantial evidence, and she permissibly rejected Dr. Kang’s opinion. See  
22 Batson, 359 F.3d at 1197 (holding that “[t]he ALJ was not required to incorporate evidence from the  
23 opinions of [plaintiff]’s treating physicians, which were permissibly discounted.”).

24 Plaintiff further argues that the ALJ erred in concluding that plaintiff’s past work in a hair salon  
25 actually constituted two occupations, namely hairstylist and manager of a beauty salon. [JS 19]. Plaintiff’s  
26 argument is without merit because, even assuming that her past work was incorrectly classified as manager  
27 of a beauty salon, plaintiff concedes that her past relevant work includes employment as a hairstylist. [See  
28 AR 29-31, 170]. The ALJ need only find plaintiff capable of performing one of her past jobs in order to



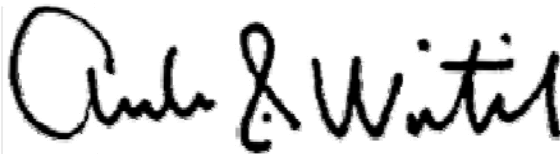
1 determine that plaintiff is not disabled at step four. Therefore, any error the ALJ made in classifying  
2 plaintiff's past work as including employment as a manager of a beauty salon was harmless error as to the  
3 ALJ's step four determination. See Burch, 400 F.3d at 679 ("A decision of the ALJ will not be reversed for  
4 errors that are harmless.").

5 **Conclusion**

6 For the reasons stated above, the Commissioner's decision is supported by substantial evidence and  
7 is free of legal error. Accordingly, the Commissioner's decision is **affirmed**.

8 **IT IS SO ORDERED.**

9  
10 March 14, 2013



11  
12 ANDREW J. WISTRICH  
13 United States Magistrate Judge  
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