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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 SAHRA M.,<sup>1</sup>

12 Plaintiff,

13 v.

14 ANDREW SAUL, Commissioner of  
15 Social Security Administration,

16 Defendant.

Case No. 5:19-cv-01329-JC

MEMORANDUM OPINION

17  
18 **I. SUMMARY**

19 On July 19, 2019, plaintiff filed a Complaint seeking review of the  
20 Commissioner of Social Security's denial of her application for benefits. The  
21 parties have consented to proceed before the undersigned United States Magistrate  
22 Judge.

23 This matter is before the Court on the parties' cross motions for summary  
24 judgment, respectively "Plaintiff's Motion" and "Defendant's Motion"  
25 (collectively, "Motions"). The Court has taken the Motions under submission  
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27 <sup>1</sup>Plaintiff's name is partially redacted to protect her privacy in compliance with Federal  
28 Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court  
Administration and Case Management of the Judicial Conference of the United States.

1 without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; Case Management  
2 Order ¶ 5.

3 Based on the record as a whole and the applicable law, the decision of the  
4 Commissioner is AFFIRMED. The findings of the Administrative Law Judge  
5 (“ALJ”) are supported by substantial evidence and are free from material error.

6 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**  
7 **DECISION**

8 On September 14, 2015, plaintiff filed an application for Disability  
9 Insurance Benefits, alleging disability beginning on February 27, 2011, due to  
10 depression, anxiety, weight gain, arthritis in the knees, torn meniscus in the right  
11 knee, and high blood pressure. (Administrative Record (“AR”) 556-57, 605, 616).  
12 An ALJ subsequently examined the medical record and heard testimony from  
13 plaintiff (who was represented by counsel) and a vocational expert on May 31,  
14 2018. (AR 391-408). On July 5, 2018, the ALJ determined that plaintiff was not  
15 disabled from the alleged onset date of August 19, 2016, to the last-insured date of  
16 March 31, 2016. (AR 30-41). Specifically, the ALJ found: (1) plaintiff suffered  
17 from the following severe impairments: right knee osteoarthritis, probable right  
18 knee meniscus tear, high blood pressure, hyperlipidemia, obesity, anxiety, and  
19 depression (AR 32); (2) plaintiff’s impairments, considered individually or in  
20 combination, did not meet or medically equal a listed impairment (AR 33);  
21 (3) plaintiff retained the residual functional capacity (“RFC”) to perform a reduced  
22 range of light work (20 C.F.R. § 404.1567(b))<sup>2</sup> (AR 20-21); (4) plaintiff could not  
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24 <sup>2</sup>The RFC assessment included the following restrictions:

25 [Plaintiff] can lift/carry 20 pounds occasionally, 10 pounds frequently; stand/walk  
26 6 hours in an 8 hour workday; sit 6 hours in an 8 hour workday; occasional  
27 postural limitations; no crawling; no climbing ladders/ropes/scaffolds; no work  
28 around unprotected heights or moving dangerous machinery; occasional push/pull

(continued...)

1 perform any past relevant work (AR 39); (5) there are jobs that exist in significant  
2 numbers in the national economy that plaintiff could perform, specifically “office  
3 helper” and “small products assembler” (AR 39-40); and (6) plaintiff’s statements  
4 regarding the intensity, persistence, and limiting effects of subjective symptoms  
5 were not entirely consistent with the medical evidence and other evidence in the  
6 record (AR 35).

7 On May 20, 2019, the Appeals Council denied plaintiff’s application for  
8 review of the ALJ’s decision. (AR 1-4).

### 9 **III. APPLICABLE LEGAL STANDARDS**

#### 10 **A. Administrative Evaluation of Disability Claims**

11 To qualify for disability benefits, a claimant must show that she is unable to  
12 engage in “any substantial gainful activity by reason of any medically  
13 determinable physical or mental impairment which can be expected to result in  
14 death or which has lasted or can be expected to last for a continuous period of not  
15 less than 12 months.” 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. §§ 404.1505(a),  
16 416.905(a). To be considered disabled, a claimant must have an impairment of  
17 such severity that she is incapable of performing work the claimant previously  
18 performed (“past relevant work”) as well as any other “work which exists in the  
19 national economy.” Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing  
20 42 U.S.C. § 423(d)).

21 To assess whether a claimant is disabled, an ALJ is required to use the five-  
22 step sequential evaluation process set forth in Social Security regulations. See  
23 Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1052 (9th Cir. 2006)

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24  
25 <sup>2</sup>(...continued)  
26 with the right lower extremity; no concentrated exposure to humidity, wetness,  
27 dust, fumes, pulmonary irritants, and extreme cold and heat; and frequent  
interaction with coworkers, supervisors, and the general public.

28 (AR 34).

1 (describing five-step sequential evaluation process) (citing 20 C.F.R. §§ 404.1520,  
2 416.920). The claimant has the burden of proof at steps one through four – *i.e.*,  
3 determination of whether the claimant was engaging in substantial gainful activity  
4 (step 1), has a sufficiently severe impairment (step 2), has an impairment or  
5 combination of impairments that meets or medically equals one of the conditions  
6 listed in 20 C.F.R. Part 404, Subpart P, Appendix 1 (“Listings”) (step 3), and  
7 retains the residual functional capacity to perform past relevant work (step 4).  
8 Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citation omitted). The  
9 Commissioner has the burden of proof at step five – *i.e.*, establishing that the  
10 claimant could perform other work in the national economy. Id.

11 **B. Federal Court Review of Social Security Disability Decisions**

12 A federal court may set aside a denial of benefits only when the  
13 Commissioner’s “final decision” was “based on legal error or not supported by  
14 substantial evidence in the record.” 42 U.S.C. § 405(g); Trevizo v. Berryhill, 871  
15 F.3d 664, 674 (9th Cir. 2017) (citation and quotation marks omitted). The  
16 standard of review in disability cases is “highly deferential.” Rounds v. Comm’r  
17 of Soc. Sec. Admin., 807 F.3d 996, 1002 (9th Cir. 2015) (citation and quotation  
18 marks omitted). Thus, an ALJ’s decision must be upheld if the evidence could  
19 reasonably support either affirming or reversing the decision. Trevizo, 871 F.3d at  
20 674-75 (citations omitted). Even when an ALJ’s decision contains error, it must  
21 be affirmed if the error was harmless. See Treichler v. Comm’r of Soc. Sec.  
22 Admin., 775 F.3d 1090, 1099 (9th Cir. 2014) (ALJ error harmless if  
23 (1) inconsequential to the ultimate nondisability determination; or (2) ALJ’s path  
24 may reasonably be discerned despite the error) (citation and quotation marks  
25 omitted).

26 Substantial evidence is “such relevant evidence as a reasonable mind might  
27 accept as adequate to support a conclusion.” Trevizo, 871 F.3d at 674 (defining  
28 “substantial evidence” as “more than a mere scintilla, but less than a

1 preponderance”) (citation and quotation marks omitted). When determining  
2 whether substantial evidence supports an ALJ’s finding, a court “must consider the  
3 entire record as a whole, weighing both the evidence that supports and the  
4 evidence that detracts from the Commissioner’s conclusion[.]” Garrison v.  
5 Colvin, 759 F.3d 995, 1009 (9th Cir. 2014) (citation and quotation marks omitted).

6 Federal courts review only the reasoning the ALJ provided, and may not  
7 affirm the ALJ’s decision “on a ground upon which [the ALJ] did not rely.”  
8 Trevizo, 871 F.3d at 675 (citations omitted). Hence, while an ALJ’s decision need  
9 not be drafted with “ideal clarity,” it must, at a minimum, set forth the ALJ’s  
10 reasoning “in a way that allows for meaningful review.” Brown-Hunter v. Colvin,  
11 806 F.3d 487, 492 (9th Cir. 2015) (citing Treichler, 775 F.3d at 1099).

12 A reviewing court may not conclude that an error was harmless based on  
13 independent findings gleaned from the administrative record. Brown-Hunter, 806  
14 F.3d at 492 (citations omitted). When a reviewing court cannot confidently  
15 conclude that an error was harmless, a remand for additional investigation or  
16 explanation is generally appropriate. See Marsh v. Colvin, 792 F.3d 1170, 1173  
17 (9th Cir. 2015) (citations omitted).

#### 18 **IV. DISCUSSION**

19 Plaintiff claims that (1) the ALJ’s RFC assessment is not supported by  
20 substantial evidence, and (2) the ALJ failed to provide clear, specific, and  
21 convincing reasons to discredit plaintiff’s statements and testimony. (Plaintiff’s  
22 Motion at 6-10). For the reasons stated below, the Court concludes that a reversal  
23 or remand is not warranted.

#### 24 **A. The RFC Assessment Is Supported by Substantial Evidence**

##### 25 **1. Pertinent Law**

26 Before proceeding to steps four and five, an ALJ must first assess the  
27 claimant’s residual functional capacity. 20 C.F.R. §§ 404.1520(e), 416.920(e);

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1 Social Security Ruling (“SSR”) 96-8P at \*1.<sup>3</sup> “A claimant’s residual functional  
2 capacity is what he can still do despite his physical, mental, nonexertional, and  
3 other limitations.” Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989)  
4 (citing 20 C.F.R. § 404.1545). When assessing RFC, an ALJ must evaluate “on a  
5 function-by-function basis” how particular impairments affect a claimant’s  
6 abilities to perform basic physical, mental, or other work-related functions. SSR  
7 96-8P at \*1 (citing 20 C.F.R. §§ 404.1545(b)-(d), 416.945(b)-(d)). An ALJ must  
8 account for limitations caused by all of a claimant’s impairments, even those that  
9 are “not severe.” SSR 96-8P at \*5 (internal quotation marks omitted). In addition,  
10 an ALJ must consider all relevant evidence in the record, including medical  
11 records, lay evidence, and the effects of a claimant’s subjective symptoms (*i.e.*,  
12 pain), that may reasonably be attributed to a medically determinable impairment.  
13 Robbins, 466 F.3d at 883 (citations omitted); see 20 C.F.R. §§ 404.1545(a)(1),  
14 416.945(a)(1).

## 15 2. Analysis

16 Plaintiff contends that the ALJ failed properly to evaluate her obesity in  
17 assessing the RFC with respect to her ability to engage in prolonged standing and  
18 walking. (Plaintiff’s Motion at 6-8). The ALJ determined that plaintiff can stand  
19 or walk for six hours in an eight-hour workday. (AR 34). Plaintiff asserts that this  
20 conflicts with “the significant objective and clinical findings in the right knee,”  
21 particularly physical examinations showing decreased range of motion, tenderness,  
22 and crepitus, along with diagnostic imaging showing moderate narrowing at the

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24 <sup>3</sup>Social Security Rulings reflect the Social Security Administration’s (“SSA”) official  
25 interpretation of pertinent statutes, regulations, and policies. 20 C.F.R. § 402.35(b)(1). Although  
26 they “do not carry the ‘force of law,’” Social Security Rulings “are binding on all components of  
27 the . . . Administration[.]” and are entitled to deference if they are “consistent with the Social  
28 Security Act and regulations.” 20 C.F.R. § 402.35(b)(1); Bray v. Comm’r of Soc. Sec. Admin.,  
554 F.3d 1219, 1224 (9th Cir. 2009) (citations and quotation marks omitted); see also Heckler v.  
Edwards, 465 U.S. 870, 873 n.3 (1984) (discussing weight and function of Social Security  
rulings).

1 medial compartment joint space, patellofemoral joint osteoarthritic changes,  
2 tricompartmental osteoarthritis, and grade 3 and 4 chondromalacia patella.  
3 (Plaintiff’s Motion at 7; see AR 772, 775, 777, 778, 783, 785, 791, 846 (exams);  
4 AR 847 (x-ray); AR 878 (MRI)).

5       However, the ALJ acknowledged these same findings in the decision (AR  
6 35), while also noting that plaintiff’s examinations consistently showed that she  
7 walked with a normal gait and without an assistive device, and her treatment for  
8 knee pain has been limited to injections. (AR 35; see AR 846, 853, 917, 1064,  
9 1073, 1180). The ALJ also noted that, according to plaintiff’s treatment notes, she  
10 regularly walked for forty-five minutes, albeit slowly. (AR 35; see 1152). In  
11 addition, the ALJ reviewed the opinions of consultative examiner Dr. Vicente  
12 Bernabe, D.O., and Dr. Herman R. Shoene, M.D., as well as a state agency  
13 consultative reviewer, who all opined that plaintiff can stand or walk for six hours  
14 and sit for six hours in an eight-hour workday.<sup>4</sup> (AR 37-38, 450, 919-20, 1181).  
15 Yet, unlike these medical sources, the ALJ accounted for plaintiff’s knee  
16 impairment and obesity by limiting plaintiff to occasional postural activities and  
17 occasional use of the right lower extremity. (AR 38).

18       As support for greater standing and walking limitations, plaintiff cites the  
19 opinion of Dr. Ronald Portnoff, M.D., who performed an orthopedic examination  
20 on January 13, 2013, in connection with plaintiff’s worker’s compensation claim,  
21 and opined that plaintiff “should avoid prolong[ed] standing, walking, repetitive  
22 kneeling, bending, and squatting.” (Plaintiff’s Motion at 7-8; AR 1195-1205). As  
23 plaintiff points out, the ALJ gave “partial weight” to this opinion. (AR 38).

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25       <sup>4</sup>The ALJ stated he gave “little weight” to the opinions of Dr. Bernabe and Dr. Schoene  
26 because their assessments were limited to considering only plaintiff’s knee pain, and thus they  
27 did not sufficiently account for other impairments that further limited plaintiff’s ability to  
28 lift/carry and engage in postural activities, among other abilities. (AR 37-38). Based on the  
record as a whole, the ALJ clearly agreed with and adopted their assessed walking, standing, and  
sitting limitations, but not other aspects.

1 Plaintiff asserts that it is “unreasonable to conclude that 6 hours of standing/  
2 walking is not considered prolonged.” (Plaintiff’s Motion at 8). However,  
3 “partial weight” reasonably conveys that the ALJ was adopting only *part* of Dr.  
4 Portnoff’s assessment. While the ALJ did not adopt the standing and walking  
5 limitation, the ALJ effectively accounted for the restriction from “repetitive  
6 kneeling, bending, and squatting” in the RFC assessment by limiting plaintiff to  
7 “occasional postural limitations,” along with no crawling or climbing, and only  
8 occasional pushing or pulling with the right lower extremity. (AR 38). For the  
9 standing and walking limitation, the ALJ reasonably diverged from Dr. Portnoff’s  
10 opinion based on other opinions and evidence in the record.

11 In addition, plaintiff asserts that it “defies common sense that [plaintiff] can  
12 be on her feet for 6 hours of an 8-hour day in light of her severe right knee  
13 impairment in combination with obesity.” (Plaintiff’s Motion at 8). To support  
14 this assertion, plaintiff cites Barrett v. Barnhart, 355 F.3d 1065, 1068 (7th Cir.  
15 2003), on reh’g, 368 F.3d 691 (7th Cir. 2004), in which Judge Posner wrote:

16 [W]e do not know on what basis [the ALJ] decided that [the claimant]  
17 can stand for two hours at a time. No physician said that. A great  
18 many people who are not grossly obese and do not have arthritic  
19 knees find it distinctly uncomfortable to stand for two hours at a time.  
20 To suppose that [the claimant] could do so day after day on a factory  
21 floor borders on the fantastic, but in any event has no evidentiary  
22 basis that we can find.

23 355 F.3d at 1068. Unlike in Barrett, there is an evidentiary basis for the ALJ’s  
24 determination regarding plaintiff’s standing and walking abilities, including the  
25 opinions of multiple physicians, as discussed above. Accordingly, plaintiff fails to  
26 identify any error in the ALJ’s RFC assessment, which is supported by substantial  
27 evidence in the record.

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1           **B.     The ALJ Properly Evaluated Plaintiff’s Subjective Complaints**

2                   **1.     Pertinent Law**

3           When determining disability, an ALJ is required to consider a claimant’s  
4 impairment-related pain and other subjective symptoms at each step of the  
5 sequential evaluation process. 20 C.F.R. §§ 404.1529(a), (d). Accordingly, when  
6 a claimant presents “objective medical evidence of an underlying impairment  
7 which might reasonably produce the pain or other symptoms [the claimant]  
8 alleged,” the ALJ is required to determine the extent to which the claimant’s  
9 statements regarding the intensity, persistence, and limiting effects of his or her  
10 subjective symptoms (“subjective statements” or “subjective complaints”) are  
11 consistent with the record evidence as a whole and, consequently, whether any of  
12 the individual’s symptom-related functional limitations and restrictions are likely  
13 to reduce the claimant’s capacity to perform work-related activities. 20 C.F.R.  
14 §§ 404.1529(a), (c)(4); SSR 16-3p, 2017 WL 5180304, at \*4-\*10.<sup>5</sup> When an  
15 individual’s subjective statements are inconsistent with other evidence in the  
16 record, an ALJ may give less weight to such statements and, in turn, find that the  
17 individual’s symptoms are less likely to reduce the claimant’s capacity to perform  
18 work-related activities. See SSR 16-3p, 2017 WL 5180304, at \*8. In such cases,  
19 when there is no affirmative finding of malingering, an ALJ may “reject” or give  
20 less weight to the individual’s subjective statements “only by providing specific,

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22           <sup>5</sup>Social Security Ruling 16-3p superseded SSR 96-7p and, in part, eliminated use of the  
23 term “credibility” from SSA “sub-regulatory policy[.]” in order to “clarify that subjective  
24 symptom evaluation is not an examination of an individual’s [overall character or truthfulness]  
25 . . . [and] more closely follow [SSA] regulatory language regarding symptom evaluation.” See  
26 SSR 16-3p, 2017 WL 5180304, at \*1-\*2, \*10-\*11. The SSA subsequently republished SSR  
27 16-3p making no change to the substantive policy interpretation regarding evaluation of a  
28 claimant’s subjective complaints, but clarifying that the SSA would apply SSR 16-3p only  
“[when making] determinations and decisions on or after March 28, 2016[.]” and that federal  
courts should apply “the rules [regarding subjective symptom evaluation] that were in effect at  
the time” an ALJ’s decision being reviewed became final. SSR 16-3p, 2017 WL 5180304, at \*1,  
\*13 n.27.

1 clear, and convincing reasons for doing so.” Brown-Hunter, 806 F.3d at 488-89.<sup>6</sup>  
2 This requirement is very difficult to satisfy. See Trevizo, 871 F.3d at 678 (“The  
3 clear and convincing standard is the most demanding required in Social Security  
4 cases.”) (citation and quotation marks omitted).

5 An ALJ’s decision “must contain specific reasons” supported by substantial  
6 evidence in the record for giving less weight to a claimant’s statements. SSR 16-  
7 3p, 2017 WL 5180304, at \*10. An ALJ must clearly identify each subjective  
8 statement being rejected and the particular evidence in the record which  
9 purportedly undermines the statement. Treichler, 775 F.3d at 1103 (citation  
10 omitted). Unless there is affirmative evidence of malingering, the Commissioner’s  
11 reasons for rejecting a claimant’s testimony must be “clear and convincing.”  
12 Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995) (internal quotation marks  
13 omitted), as amended (Apr. 9, 1996). “General findings are insufficient[.]”  
14 Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998) (citations omitted).

15 If an ALJ’s evaluation of a claimant’s statements is reasonable and is  
16 supported by substantial evidence, it is not the court’s role to second-guess it. See  
17 Thomas v. Barnhart, 278 F.3d 947, 959 (9th Cir. 2002) (citation omitted). When  
18 an ALJ fails properly to discuss a claimant’s subjective complaints, however, the  
19 error may not be considered harmless “unless [the Court] can confidently conclude  
20 that no reasonable ALJ, when fully crediting the testimony, could have reached a  
21 different disability determination.” Stout, 454 F.3d at 1056; see also Brown-  
22 Hunter, 806 F.3d at 492 (ALJ’s erroneous failure to specify reasons for rejecting  
23 claimant testimony “will usually not be harmless”).

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26 <sup>6</sup>It appears to this Court, based upon its research of the origins of the requirement that  
27 there be “specific, clear and convincing” reasons to reject or give less weight to an individual’s  
28 subjective statements absent an affirmative finding of malingering, that such standard of proof  
remains applicable even when SSR 16-3p governs. See Trevizo, 871 F.3d at 678-79 & n.5  
(citations omitted).

1                   **2. Plaintiff's Testimony**

2           Plaintiff testified that she has a torn meniscus in the right knee, chronic  
3 pain, high cholesterol, high blood pressure, diabetes, asthma, depression, and  
4 anxiety. (AR 396-400). She also testified that she has difficulty losing weight due  
5 to a metabolic syndrome, the bottom of her feet sometimes feel numb, and she has  
6 pain in her left side and must frequently urinate. (AR 397, 398, 400).

7           According to plaintiff, she spends a normal day sitting and elevating her  
8 feet. (AR 400). She does not change out of her pajamas and becomes very sad  
9 and depressed. (AR 400). She testified that she can stand for up to twenty or  
10 thirty minutes; walk for up to twenty minutes; sit for up to twenty minutes before  
11 having to switch positions and elevate her legs; and lift or carry only five or ten  
12 pounds. (AR 398-99, 401). She only drives short distances and does not drive on  
13 the freeways because of her knee and anxiety. (AR 399). Moreover, she stated  
14 that she cannot concentrate and has memory problems. (AR 401).

15                   **3. Analysis**

16           The ALJ found that plaintiff's medically determinable impairments could  
17 reasonably be expected to cause the alleged symptoms, but determined that  
18 plaintiff's statements about the intensity, persistence, and limiting effects of the  
19 symptoms were not entirely consistent with the medical evidence and other  
20 evidence in the record. (AR 35, 37). Plaintiff contends that the ALJ failed to  
21 provide sufficient support for this determination. (Plaintiff's Motion at 8-10).

22           However, in assessing plaintiff's subjective statements, the ALJ clearly  
23 identified each of plaintiff's primary allegations and gave clear and convincing  
24 reasons to discount the severity of her symptoms, supported by substantial  
25 evidence in the record. First, the ALJ found plaintiff's statements inconsistent  
26 with the objective evidence in the record, including diagnostic evidence and  
27 physical examination findings. (AR 35-39). This is a proper factor to consider  
28 when evaluating a claimant's subjective complaints. See Burch, 400 F.3d at 681

1 (“Although lack of medical evidence cannot form the sole basis for discounting  
2 pain testimony, it is a factor that the ALJ can consider . . . .”). Regarding  
3 plaintiff’s complaints of knee pain, for example, the ALJ noted that plaintiff  
4 walked with a normal gait and without an assistive device. (AR 35; see AR 846,  
5 853, 917, 1064, 1073, 1180). Reviewing, in detail, the evidence related to  
6 plaintiff’s high blood pressure (hypertension), high cholesterol (hyperlipidemia),  
7 and asthma, the ALJ cited records reflecting generally normal test results and an  
8 absence of serious symptoms that would significantly limit plaintiff’s functioning.  
9 (AR 35-36). In addition, the ALJ reasonably found that treatment records from  
10 plaintiff’s primary care physicians did not reflect any significant physical  
11 limitations. (AR 37).

12 The ALJ also noted plaintiff’s conservative treatment for each of her  
13 conditions. This, too, is an appropriate ground on which to discount a claimant’s  
14 symptom testimony. See Parra v. Astrue, 481 F.3d 742, 751 (9th Cir. 2007)  
15 (“[E]vidence of ‘conservative treatment’ is sufficient to discount a claimant’s  
16 testimony regarding severity of an impairment.”) (citation omitted), cert. denied,  
17 552 U.S. 1141 (2008). For example, the ALJ noted that plaintiff’s knee pain has  
18 been treated with injections, her other physical conditions (such hypertension,  
19 hyperlipidemia, and asthma) were controlled with medications, and she has  
20 generally required no emergency treatment or surgical procedures. (AR 35-37;  
21 see, e.g., AR 704, 855, 911, 934, 1128). Plaintiff’s mental symptoms were also  
22 treated conservatively with anxiety medication, and she did not receive any  
23 ongoing mental health treatment from a psychiatrist or participate in  
24 psychotherapy.<sup>7</sup> (AR 38, 1167). Moreover, the ALJ remarked that plaintiff’s  
25 doctors had encouraged her to lose weight through exercise and dietary

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27 <sup>7</sup>The ALJ did, however, “give[] some weight to [plaintiff’s] subjective complaints and  
28 evidence” regarding depression and anxiety, and thus limited plaintiff to unskilled work with  
often frequent interaction with coworkers, supervisors, and the general public. (AR 34, 39).

1 restrictions, and plaintiff had received counseling for exercise and physical  
2 activity. (AR 35, 37; see AR 936-37, 939-40, 956, 967-68, 1152).

3 As a further basis, the ALJ noted that plaintiff was able to engage in daily  
4 activities such as toileting, bathing, dressing, cooking, doing household chores,  
5 running errands, and shopping. (AR 37; see AR 924, 1152). Plaintiff contends  
6 that the ALJ failed to explain how these activities translate into the ability to  
7 perform full-time work on a consistent basis. (Plaintiff's Motion at 9). However,  
8 even where a claimant's activities suggest some difficulty in functioning, an ALJ  
9 may give less weight to subjective complaints to the extent a claimant's apparent  
10 actual level of activity is inconsistent with the extent of functional limitation she  
11 alleged. See Burrell v. Colvin, 775 F.3d 1133, 1137 (9th Cir. 2014)  
12 (inconsistencies between claimant's testimony and claimant's reported activities  
13 valid reason for giving less weight to claimant's subjective complaints); Curry v.  
14 Sullivan, 925 F.2d 1127, 1130 (9th Cir. 1990) (claimant's ability to "take care of  
15 her personal needs, prepare easy meals, do light housework and shop for some  
16 groceries . . . may be seen as inconsistent with the presence of a condition which  
17 would preclude all work activity") (citing Fair v. Bowen, 885 F.2d 597, 604 (9th  
18 Cir. 1989)). Here, for example, the ALJ cited a treatment note in which plaintiff  
19 had reported regularly walking for about forty-five minutes (AR 35, 1152), despite  
20 plaintiff's testimony that she can walk for only twenty minutes and stand for only  
21 twenty or thirty minutes (AR 398-99, 401).

22 Plaintiff fails to point to any evidence that the ALJ mischaracterized or  
23 overlooked. Indeed, the only symptoms or impairments that plaintiff specifically  
24 addresses in Plaintiff's Motion are her knee pain and obesity, with respect to her  
25 alleged standing and walking limitations, discussed above. (See Plaintiff's Motion  
26 at 6-8). Although the record contains some conflicting evidence and assessments,  
27 the ALJ reasonably resolved such conflicts and ambiguities. See Tommasetti v.  
28 Astrue, 533 F.3d 1035, 1041-42 (9th Cir. 2008) ("The ALJ is the final arbiter with

1 respect to resolving ambiguities in the medical evidence”); see also Shaibi v.  
2 Berryhill, 883 F.3d 1102, 1108 (9th Cir. 2017) (“Where evidence is susceptible to  
3 more than one rational interpretation, it is the ALJ’s conclusion that must be  
4 upheld.”). Accordingly, plaintiff has failed to identify any material error in the  
5 ALJ’s decision. The ALJ provided specific, clear, and convincing reasons to  
6 discount plaintiff’s testimony regarding the limiting effects of her symptoms, and  
7 those reasons are supported by substantial evidence in the record.

8 **V. CONCLUSION**

9 For the foregoing reasons, the decision of the Commissioner of Social  
10 Security is AFFIRMED.

11 LET JUDGMENT BE ENTERED ACCORDINGLY.

12 DATED: October 8, 2020

13 \_\_\_\_\_  
/s/

14 Honorable Jacqueline Chooljian  
15 UNITED STATES MAGISTRATE JUDGE  
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