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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 STACEY KUKES,

10 Plaintiff,

11 v.
12

13 CAROLYN W. COLVIN,
14 Commissioner of Social Security,

15 Defendant.
16

No. 1:15-CV-3166-JTR

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

17 **BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF
18 No. 14, 16. Attorney Thomas Andrew Bothwell represents Stacey Kukes
19 (Plaintiff); Special Assistant United States Attorney Lars J. Nelson represents the
20 Commissioner of Social Security (Defendant). The parties have consented to
21 proceed before a magistrate judge. ECF No. 3. After reviewing the administrative
22 record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for
23 Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

24 **JURISDICTION**

25 On November 28, 2012, Plaintiff filed an application for Disability
26 Insurance Benefits (DIB), alleging disability since August 1, 2011, due to
27 back/neck problems, IBS, scoliosis, arthritis, depression, bone spurs and chronic
28 pain. Tr. 165, 190. At the administrative hearing, Plaintiff amended her alleged

1 onset date to November 19, 2012, her 50th birthday. Tr. 34-35. The application
2 was denied initially and upon reconsideration. Administrative Law Judge (ALJ)
3 Tom L. Morris held a hearing on May 13, 2014, Tr. 32-55, and issued an
4 unfavorable decision on June 25, 2014, Tr. 18-27. The Appeals Council denied
5 Plaintiff's request for review on August 24, 2015. Tr. 1-3. The ALJ's June 2014
6 decision thus became the final decision of the Commissioner, which is appealable
7 to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for
8 judicial review on September 15, 2015. ECF No. 1, 5.

9 **STATEMENT OF FACTS**

10 The facts of the case are set forth in the administrative hearing transcript, the
11 ALJ's decision, and the briefs of the parties. They are only briefly summarized
12 here.

13 Plaintiff is a high school graduate and was 50 years old on the amended
14 alleged onset date, November 19, 2012. Tr. 34. Plaintiff testified at the
15 administrative hearing she had performed no work in the two years prior to the
16 hearing. Tr. 36-37. She was supported financially through her husband's social
17 security, food stamps and state medical assistance. Tr. 37-38. Her past work
18 consists of employment as a cashier, mail clerk, sales attendant, inventory clerk
19 and child monitor. Tr. 38-40. Plaintiff testified she is unable to perform her past
20 work because she is not able to stand for longer than 30 minutes at a time, her
21 lower back and hips hurt constantly, and she can no longer twist and bend like she
22 was once able. Tr. 40-41.

23 Plaintiff stated her primary care physician, Dr. Kristin Larson, had referred
24 her for physical therapy and for a cortisone shot. Tr. 41-42. She testified that she
25 had not yet started the physical therapy, but had been administered a cortisone shot
26 with no significant relief. Tr. 42.

27 Plaintiff stated she spends a typical day sitting at her desk playing computer
28 games and drinking coffee and sitting in her recliner watching television. Tr. 43.

1 She indicated she spends a good part of her day in her recliner with her feet
2 elevated to take pressure off of her lower back. Tr. 43-44. She watches television
3 about 10 or 11 hours a day, plays on the computer, and reads romance books for
4 about 30 minutes a day. Tr. 45-46.

5 **STANDARD OF REVIEW**

6 The ALJ is responsible for determining credibility, resolving conflicts in
7 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
8 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*,
9 although deference is owed to a reasonable construction of the applicable statutes.
10 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ
11 may be reversed only if it is not supported by substantial evidence or if it is based
12 on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial
13 evidence is defined as being more than a mere scintilla, but less than a
14 preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant
15 evidence as a reasonable mind might accept as adequate to support a conclusion.
16 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to
17 more than one rational interpretation, the Court may not substitute its judgment for
18 that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec.*
19 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). Nevertheless, a decision supported by
20 substantial evidence will still be set aside if the proper legal standards were not
21 applied in weighing the evidence and making the decision. *Browner v. Secretary*
22 *of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial
23 evidence supports the administrative findings, or if conflicting evidence supports a
24 finding of either disability or non-disability, the ALJ's determination is conclusive.
25 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

26 **SEQUENTIAL EVALUATION PROCESS**

27 The Commissioner has established a five-step sequential evaluation process
28 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),

1 416.920(a); *see, Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one
2 through four, the burden of proof rests upon the claimant to establish a prima facie
3 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This
4 burden is met once a claimant establishes that a physical or mental impairment
5 prevents him from engaging in his previous occupation. 20 C.F.R. §§
6 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the
7 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that
8 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist
9 in the national economy which claimant can perform. *Batson v. Commissioner of*
10 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make
11 an adjustment to other work in the national economy, a finding of “disabled” is
12 made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

13 **ADMINISTRATIVE DECISION**

14 On June 25, 2014, the ALJ issued a decision finding Plaintiff was not
15 disabled as defined in the Social Security Act.

16 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
17 activity since the alleged onset date. Tr. 20. At step two, the ALJ determined
18 Plaintiff had the severe impairment of degenerative disc disease. Tr. 20. At step
19 three, the ALJ found Plaintiff did not have an impairment or combination of
20 impairments that meets or medically equals the severity of one of the listed
21 impairments. Tr. 22.

22 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and
23 determined she could perform a range of light exertion level work. Tr. 22. The
24 ALJ found Plaintiff could lift up to 20 pounds occasionally and lift 10 pounds
25 frequently; could stand and/or walk about six hours and sit up to six hours in an
26 eight-hour day with normal breaks; could frequently balance, kneel, crouch and
27 climb ramps and stairs; could occasionally stoop, crawl, and climb ladders, ropes
28 or scaffolds; must avoid concentrated exposure to extreme cold and vibration; and

1 would need to be able to periodically alternate sitting and standing, but this could
2 be accomplished with normal breaks and lunch. Tr. 22.

3 At step four, the ALJ found Plaintiff was able to perform her past relevant
4 work as a Cashier II, Sales Clerk and Mail Clerk. Tr. 26. Alternatively, at step
5 five, the ALJ determined that, considering Plaintiff's age, education, work
6 experience and RFC, and based on the testimony of the vocational expert, there
7 were other jobs that exist in significant numbers in the national economy Plaintiff
8 could perform, including occupations such as Production Assembler, Housekeeper,
9 and Hand Packager. Tr. 26-27. The ALJ thus concluded Plaintiff was not under a
10 disability within the meaning of the Social Security Act at any time from August 1,
11 2011, the initial alleged onset date, through the date of the ALJ's decision, June 25,
12 2014. Tr. 27.

13 ISSUES

14 The question presented is whether substantial evidence supports the ALJ's
15 decision denying benefits and, if so, whether that decision is based on proper legal
16 standards.

17 Plaintiff contends the ALJ erred in assessing Plaintiff's physical condition
18 by (1) improperly rejecting the opinions of William Drenguis, M.D., and Kristin
19 Larson, M.D., and instead relying on the state agency opinion of Olegario Ignacio,
20 Jr., M.D.; and (2) improperly rejecting Plaintiff's subjective complaints. ECF No.
21 14 at 7-14.

22 DISCUSSION

23 A. Plaintiff's Credibility

24 Plaintiff contests the ALJ's adverse credibility determination in this case.
25 ECF No. 14 at 11-14. Defendant responds that the ALJ provided valid reasons for
26 discounting Plaintiff's subjective complaints. ECF No. 15 at 14-17.

27 It is the province of the ALJ to make credibility determinations. *Andrews*,
28 53 F.3d at 1039. However, the ALJ's findings must be supported by specific

1 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once
2 the claimant produces medical evidence of an underlying medical impairment, the
3 ALJ may not discredit testimony as to the severity of an impairment because it is
4 unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir.
5 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting
6 the claimant's testimony must be "specific, clear and convincing." *Smolen v.*
7 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834
8 (9th Cir. 1995). "General findings are insufficient: rather the ALJ must identify
9 what testimony is not credible and what evidence undermines the claimant's
10 complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.
11 1993).

12 In this case, the ALJ found Plaintiff's medically determinable impairments
13 could reasonably be expected to cause some of the alleged symptoms; however,
14 Plaintiff's statements concerning the intensity, persistence and limiting effects of
15 these symptoms were not entirely credible for various reasons. Tr. 23-25.

16 Within the section of the ALJ's determination pertaining to Plaintiff's
17 credibility, the ALJ noted Plaintiff refused to follow through with treatment
18 recommendations by failing to quit smoking. Tr. 24-25. The Court finds that a
19 claimant's failure to comply with a diagnosis to quit smoking is an unreliable basis
20 on which to rest a credibility determination. *See Shramek v. Apfel*, 226 F.3d 809,
21 813 (7th Cir. 2000) ("Given the addictive nature of smoking, the failure to quit is
22 as likely attributable to factors unrelated to the effect of smoking on a person's
23 health."). Even though Plaintiff's smoking may have contributed to her symptoms,
24 the fact that she did not quit as recommended by her doctors does not necessarily
25 undermine her credibility. Plaintiff's failure to quit smoking is not a clear and
26 convincing reason for discounting her credibility.

27 The ALJ also stated that Plaintiff's activities throughout the relevant period
28 were inconsistent with her allegations of severely limiting symptoms. Tr. 24. It is

1 well-established that the nature of daily activities may be considered when
2 evaluating credibility. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).
3 However, while the ALJ indicated Plaintiff’s allegations of disability were
4 inconsistent with her testimony that she can go to the grocery store, is able to drive
5 herself around, plays computer games, reads novels for 30 minutes at a time, and
6 watches over 10 hours of television a day, Tr. 24, there is no explicit evidence or
7 report of how Plaintiff specifically spends this time. *See Fair*, 885 F.2d at 603
8 (one does not need to be “utterly incapacitated” to be disabled); *Vertigan v. Halter*,
9 260 F.3d 1044, 1050 (9th Cir. 2001) (“[T]he mere fact that a plaintiff has carried
10 on certain daily activities, such as grocery shopping, driving a car, or limited
11 walking for exercise, does not in any way detract from her credibility as to her
12 overall disability.”). It was not proper for the ALJ to find Plaintiff’s level of
13 activity in this case was inconsistent with her subjective complaints.

14 Nevertheless, given the ALJ’s other reasons for finding Plaintiff less than
15 fully credible, as indicated below, the Court finds these two errors harmless. *See*
16 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1160, 1163 (9th Cir. 2008)
17 (upholding adverse credibility finding where ALJ provided four reasons to
18 discredit claimant, two of which were invalid); *Batson v. Comm’r, Soc. Sec.*
19 *Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (affirming credibility finding where
20 one of several reasons was unsupported by the record); *Tommasetti v. Astrue*, 533
21 F.3d 1035, 1038 (9th Cir. 2008) (an error is harmless when “it is clear from the
22 record that the . . . error was inconsequential to the ultimate nondisability
23 determination”).

24 With respect to Plaintiff’s credibility, the ALJ found that the minimal and
25 mild physical examination findings throughout the record were inconsistent with
26 Plaintiff’s allegations of severely limiting pain. Tr. 23. “Although lack of medical
27 evidence cannot form the sole basis for discounting pain testimony, it is a factor
28 that the ALJ can consider in his credibility analysis.” *Burch v. Barnhart*, 400 F.3d

1 676, 681 (9th Cir. 2005); *see also Carmickle*, 533 F.3d at 1161 (9th Cir. 2008)
2 (“Contradiction with the medical record is a sufficient basis for rejecting the
3 claimant’s subjective testimony.”); *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040
4 (9th Cir. 2007) (in determining credibility, ALJ may consider “whether the alleged
5 symptoms are consistent with the medical evidence”).

6 As indicated by the ALJ, although Plaintiff’s treating physician Dr. Larson
7 noted in August 2011 that Plaintiff demonstrated some tenderness and alleged pain
8 with range of motion on physical examination, Plaintiff also presented as pleasant
9 and in no acute distress. Tr. 23, 246. During her March 1, 2013, consultative
10 examination with Dr. Drenguis, it was noted Plaintiff was able to take her shoes off
11 and put them on without assistance despite asserting this was the most difficult
12 thing for her to do. Tr. 23, 268. Dr. Drenguis indicated Plaintiff had some loss in
13 her spinal range of motion, but normal range of motion in her hips and extremities
14 and positive straight leg raise testing, but without radiation into either leg or
15 muscle spasms in her back. Tr. 23, 269-270. Dr. Drenguis further indicated
16 Plaintiff had 5/5 muscle strength in all extremities, intact sensation, and equal
17 reflexes. Tr. 23-24, 270. The ALJ also mentioned that in April and May 2014,
18 Michael S. Mullin, D.O., an examining spinal specialist, indicated Plaintiff had full
19 range of motion in her musculoskeletal system; normal gait, station and balance;
20 no atrophy; 5/5 strength; intact sensation; equal reflexes; and normal coordination.
21 Tr. 24, 298. In assessing Plaintiff’s credibility, the ALJ properly noted the
22 inconsistencies between Plaintiff’s alleged limitations and the relatively mild
23 physical examination findings throughout the record.

24 The ALJ also held that the conservative treatment Plaintiff received was
25 inconsistent with her allegations of severely limiting back pain. Tr. 24. Evidence
26 of “conservative treatment” is sufficient to discount a claimant’s testimony
27 regarding the severity of an impairment. *Parra v. Astrue*, 481 F.3d 742, 751 (9th

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1 Cir. 2007); *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (conservative
2 treatment suggests a lower level of both pain and functional limitation).

3 As noted by the ALJ, Plaintiff's treatment generally consisted of muscle
4 relaxers, ibuprofen, some injections, and physical therapy. Tr. 24. These methods
5 of treatment are considered conservative. *See Parra*, 481 F.3d at 751 (finding
6 over-the-counter medication is conservative treatment); *Drewes v. Colvin*, 2014
7 WL 5850549 at *5 (E.D. Wash. 2014) (holding that the use of muscle relaxers for
8 the treatment of pain is conservative treatment); *Gallo v. Comm'r of Soc. Sec.*
9 *Admin.*, 2010 WL 545848 at *14 (N.D. Cal. 2010) *aff'd*, 449 F. App'x 648 (9th
10 Cir. 2011) (defining an epidural steroid injection as conservative treatment);
11 *Tommasetti*, 533 F.3d at 1040 (describing "physical therapy" as conservative
12 treatment); *Morris v. Colvin*, 2014 WL 2547599 at *4 (C.D. Cal. 2014) (finding
13 the ALJ properly discounted credibility when plaintiff received conservative
14 treatment consisting of physical therapy, use of TENS unit, chiropractic treatment,
15 Vicodin, and Tylenol with Vicodin). The ALJ's determination that Plaintiff's
16 conservative treatment was inconsistent with the claimed severity of her pain is
17 supported by substantial evidence and provides another clear and convincing
18 reason for discounting Plaintiff's testimony.

19 The ALJ also indicated Plaintiff's inconsistent reporting as detracting from
20 her credibility. Tr. 24. Inconsistencies in a disability claimant's reporting supports
21 a decision by the ALJ that a claimant lacks credibility with respect to her claim of
22 disabling pain. *See Nyman v. Heckler*, 779 F.2d 528, 531 (9th Cir. 1986).

23 The ALJ noted that Plaintiff informed Dr. Larson in March 2014 that she
24 had tried physical therapy and did not want to try it again. Tr. 24, 278. However,
25 in May 2014, she told Dr. Mullin she had good relief with physical therapy, Tr.
26 297, and later agreed to pursue physical therapy, Tr. 301. Tr. 24. The ALJ
27 additionally indicated Plaintiff reported to DSHS that if she lifted anything heavier
28 than a gallon of milk, she would "have a migraine for days after." Tr. 24, 253.

1 Yet, her treatment notes only include complaints of neck and back pain, with no
2 report of migraine headaches. Tr. 24. There is no indication Plaintiff sought
3 treatment for migraine headaches. Tr. 24. Furthermore, although she did complain
4 of general headaches on at least one occasion, Tr. 245, there is no mention of a link
5 between these headaches and lifting. Tr. 24. The forgoing inconsistencies noted
6 by the ALJ are legitimate reasons to discount Plaintiff’s credibility.

7 The ALJ also indicated evidence suggested Plaintiff’s primary motivation
8 for seeking medical treatment was to obtain benefits. Tr. 24. The Ninth Circuit
9 has recognized that the ALJ may consider the issue of secondary gain in rejecting
10 symptom testimony. *Tidwell v. Apfel*, 161 F.3d 599, 602 (9th Cir. 1998); *Gaddis v.*
11 *Chater*, 76 F.3d 893, 896 (8th Cir. 1996) (allowing an ALJ to judge credibility
12 based on a strong element of secondary gain); *Matney v. Sullivan*, 981 F.2d 1016,
13 1020 (9th Cir. 1992) (the ALJ may properly consider the issue of motivation in
14 assessing credibility).

15 The ALJ noted that when Plaintiff sought an examination from Dr. Mullin in
16 April 2014, Plaintiff specifically informed Dr. Mullin she was looking for “proof”
17 that she could not work as she was applying for disability. Tr. 298. The ALJ
18 stated that this evidence suggested Plaintiff’s primary motivation for the
19 consultation was related to obtaining benefits versus obtaining treatment, implying
20 her condition was not as severe as she alleged. Tr. 24. This was yet another
21 permissible basis for the ALJ to find Plaintiff less than fully credible in this case.

22 The ALJ is responsible for reviewing the evidence and resolving conflicts or
23 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
24 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in
25 evidence. *Richardson*, 402 U.S. at 400. The Court has a limited role in
26 determining whether the ALJ’s decision is supported by substantial evidence and
27 may not substitute its own judgment for that of the ALJ even if it might justifiably
28 have reached a different result upon *de novo* review. 42 U.S.C. § 405(g). After

1 reviewing the record, the Court finds that the ALJ provided several valid reasons
2 for discounting Plaintiff's subjective complaints that are clear, convincing, and
3 fully supported by the record. Accordingly, the ALJ did not err by finding
4 Plaintiff's subjective complaints were not entirely credible in this case.

5 **B. Medical Source Opinions**

6 Plaintiff argues the ALJ erred by according "significant weight" to the state
7 agency medical consultant, Dr. Ignacio, and by failing to accord proper weight to
8 the opinions of Drs. Larson and Drenguis. ECF No. 14 at 7-11. Defendant
9 responds that the ALJ properly weighed the medical evidence of record in this
10 case. ECF No. 16 at 9-14.

11 In disability proceedings, a treating physician's opinion carries more weight
12 than an examining physician's opinion, and an examining physician's opinion is
13 given more weight than that of a nonexamining physician. *Benecke v. Barnhart*,
14 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d at 830. If the treating or
15 examining physician's opinions are not contradicted, they can be rejected only
16 with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the
17 opinion can only be rejected for "specific" and "legitimate" reasons that are
18 supported by substantial evidence in the record. *Andrews*, 53 F.3d at 1043.
19 Historically, the courts have recognized conflicting medical evidence, the absence
20 of regular medical treatment during the alleged period of disability, and the lack of
21 medical support for doctors' reports based substantially on a claimant's subjective
22 complaints of pain as specific, legitimate reasons for disregarding a treating or
23 examining physician's opinion. *Flaten v. Secretary of Health and Human Servs.*,
24 44 F.3d 1453, 1463-1464 (9th Cir. 1995); *Fair*, 885 F.2d at 604.

25 The ALJ found that although Plaintiff had severe degenerative disc disease,
26 the objective medical evidence did not support the degree of limitation alleged by
27 Plaintiff. Instead, the ALJ determined Plaintiff retained the RFC to perform a
28 range of light exertion level work, which included the ability to stand and/or walk

1 and sit about six hours in an eight-hour workday with normal breaks. Tr. 22. The
2 Court finds the ALJ’s interpretation of the medical record is supported by
3 substantial evidence. *See infra*.

4 **1. Olegario Ignacio, Jr., M.D.**

5 Plaintiff contends the ALJ erred by finding the opinion of state agency
6 nonexamining physician Dr. Ignacio persuasive in this case. ECF No. 14 at 11.

7 The opinions of nonexamining doctors are generally entitled to less weight
8 than doctors who treat or examine a claimant. *Benecke*, 379 F.3d at 592; *Lester*, 81
9 F.3d at 830. The Ninth Circuit has held that “[t]he opinion of a nonexamining
10 physician cannot by itself constitute substantial evidence that justifies the rejection
11 of the opinion of either an examining physician or a treating physician.” *Lester*, 81
12 F.3d at 830. However, an ALJ’s decision to reject the opinion of a treating or
13 examining physician, may be based in part on the testimony of a nonexamining
14 medical advisor. *Magallanes*, 881 F.2d at 751-755; *Andrews*, 53 F.3d at 1043.
15 The ALJ must also provide other evidence to support her decision, such as
16 laboratory test results, contrary reports from examining physicians, and testimony
17 from the claimant that was inconsistent with the physician’s opinion. *Magallanes*,
18 881 F.2d at 751-752; *Andrews*, 53 F.3d 1042-1043.

19 The ALJ accorded “significant” weight to Dr. Ignacio’s opinions because
20 they were consistent with the minimal findings on physical exam of Plaintiff and
21 the record as a whole. Tr. 25. Substantial evidence supports the ALJ’s decision in
22 this regard. *See infra*.

23 On April 25, 2013, Dr. Ignacio reviewed the record and opined Plaintiff
24 could perform light exertion level work and could stand and/or walk about six
25 hours and sit more than six hours per workday. Tr. 25, 73. Dr. Ignacio noted the
26 conservative treatment history of Plaintiff and reported he reviewed imaging
27 findings involving both the cervical and L/S spines. Tr. 74. Old imaging of
28 Plaintiff’s back and neck revealed some scoliosis and only mild degenerative

1 changes of her lumbar spine. Tr. 20, 243. Objective imaging from March 2013
2 revealed moderate degenerative changes in the cervical spine and mild to moderate
3 degenerative changes in her lumbar spine. Tr. 20, 270; *see Johnson*, 60 F.3d at
4 1434 (finding that imaging did not support the degree of functional limitation
5 alleged). As discussed in Section A, conservative treatment followed.

6 Dr. Ignacio also reviewed Dr. Drenguis' consultative examination. Tr. 74.
7 Dr. Ignacio found Dr. Drenguis' physical examination findings "very reassuring,"
8 given the normal gait, station and coordination, 5/5 muscle strength, normal deep
9 tendon reflexes and intact sensory findings. Tr. 74, 269-270. These examination
10 findings by Dr. Drenguis are consistent with the 2014 findings of examining spinal
11 specialist Dr. Mullin. As noted by the ALJ, Dr. Mullin found that Plaintiff had full
12 range of motion in her musculoskeletal system; normal gain, station and balance;
13 no atrophy; 5/5 strength; intact sensation; equal reflexes; and normal coordination
14 and observed Plaintiff was in no acute distress. Tr. 24, 297-301.

15 Based on the foregoing, Dr. Ignacio's opinion is supported by substantial
16 evidence, including the objective imaging of record, Plaintiff's conservative
17 treatment history, and the minimal physical examination findings of record. Thus,
18 the ALJ did not err by according significant weight to Dr. Ignacio's opinions.

19 **2. Kristin Larson, M.D.**

20 Plaintiff contends the ALJ erred by failing to accord proper weight to the
21 opinion of her treating physician, Kristin Larson, M.D., that Plaintiff was incapable
22 of full time employment. ECF No. 14 at 7-9.

23 On March 27, 2014, Dr. Larson filled out a "Medical Questionnaire" form
24 provided by Plaintiff's attorney. Tr. 284. Dr. Larson checked a box on the form
25 which stated "I do not believe that this patient is capable of performing any type of
26 work on a reasonably continuous, sustained basis." *Id.* The Medical Questionnaire
27 check-box form is devoid of any vocational details or any information regarding

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1 Plaintiff's medical condition.¹ In an area on the form which permitted comments
2 by the doctor, Dr. Larson merely indicated "no treatment yet." Tr. 284. Dr.
3 Larson does not include an explanation or basis for her check-box conclusion on
4 the Medical Questionnaire form.

5 The ALJ provided two reasons for finding Dr. Larson's opinion on the
6 check-box form little weight: (1) Dr. Larson did not provide significant support or
7 a basis for the opinion, which is inconsistent with the minimal examination
8 findings and conservative treatment offered to Plaintiff; and (2) an opinion
9 regarding disability is one that is reserved for the commissioner. Tr. 25.

10 It is the role of the ALJ to determine whether a claimant is "disabled" within
11 the meaning of the Social Security Act, and that determination is based on both
12 medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156-
13 1157 (9th Cir. 2001). The check-box form does not include any vocational
14 information pertaining to Plaintiff, and, perhaps more significant, it fails to provide
15 any specific information regarding Plaintiff's medical condition. In any event, it is
16 the responsibility of the ALJ, not a physician, to make an ultimate determination of
17 disability in a Social Security case. *McLeod v. Astrue*, 640 F.3d 881, 885 (9th Cir.
18 2011) (a determination regarding whether a claimant can perform work is for the
19 Social Security Administration to make, not a physician); *see also* 20 C.F.R. §
20 416.927(d)(1) ("A statement by a medical source that you are 'disabled' or 'unable
21 to work' does not mean that we will determine that you are disabled."). The ALJ
22 did not err by stating that disability determinations are reserved for the
23 Commissioner.

24 _____
25 ¹A check-box form is entitled to little weight. *Crane v. Shalala*, 76 F.3d
26 251, 253 (9th Cir. 1996) (stating that the ALJ's rejection of a check-off report that
27 did not contain an explanation of the bases for the conclusions made was
28 permissible).

1 Moreover, an ALJ may discredit physicians’ opinions that are conclusory,
2 brief, and unsupported by the record as a whole, *Matney*, 981 F.2d at 1019, or by
3 objective medical findings, *Tonapetyan*, 242 F.3d at 1149. As indicated above, the
4 check-box form completed by Dr. Larson does not contain any information
5 regarding Plaintiff’s medical condition or an explanation or basis for the opinion.
6 Tr. 284. Consequently, as determined by the ALJ, Dr. Larson’s opinion on the
7 check-box form is unsupported. *Tonapetyan*, 242 F.3d at 1149 (an ALJ may
8 discredit a treating physician’s opinion that is unsupported by rationale or
9 treatment notes and offers no objective medical findings to support the existence of
10 alleged conditions).

11 The reasons provided by the ALJ for according little weight to Dr. Larson’s
12 opinion on the check-box form are clear and convincing and supported by
13 substantial evidence. *Lester*, 81 F.3d at 830.

14 **3. William Drenguis, M.D.**

15 Plaintiff argues the ALJ also erred by rejecting the March 2013 examining
16 opinion of Dr. Drenguis, which limited Plaintiff to no more than four hours of
17 sitting, standing and walking in an eight-hour day. ECF No. 14 at 9-11; Tr. 271.

18 The ALJ accorded some weight to the opinion of Dr. Drenguis, but gave
19 little weight to the limitations he assessed on sitting, standing and walking because
20 the limitations were inconsistent with the minimal and mild objective physical
21 examination findings. Tr. 25.

22 As noted by the ALJ, Dr. Drenguis’ examination findings include normal
23 range of motion in her hips and extremities, positive straight leg raise testing
24 without radiation into either leg or muscle spasm in her back, 5/5 muscle strength
25 in all extremities, intact sensation, and equal reflexes. Tr. 23-24, 269-270. Dr.
26 Drenguis also noted Plaintiff was able to take her shoes off and put them on
27 without assistance, despite alleging this was her “hardest thing to do.” Tr. 23, 268.
28 Furthermore, the ALJ noted examining spinal specialist Dr. Mullin found that

1 Plaintiff had full range of motion in her musculoskeletal system; normal gait,
2 station and balance; no atrophy; 5/5 strength; intact sensation; equal reflexes; and
3 normal coordination. Tr. 24, 298. As determined by the ALJ, these physical
4 examination findings conflict with a conclusion that Plaintiff is limited to
5 standing/walking and sitting only four hours in an eight-hour workday. Tr. 25; *see*
6 *Mayer v. Massanari*, 276 F.3d 453, 458 (9th Cir. 2001) (“The findings of the
7 Secretary as to any fact, if supported by substantial evidence, shall be
8 conclusive.”); *Matney*, 981 F.2d at 1019 (“When there is conflicting medical
9 evidence, the Secretary must determine credibility and resolve the conflict.”). It is
10 the responsibility of the ALJ to determine credibility, resolve conflicts in medical
11 testimony and resolve ambiguities, *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir.
12 1996), and this Court may not substitute its own judgment for that of the ALJ, 42
13 U.S.C. § 405(g). Where, as here, the ALJ has made specific findings justifying a
14 decision, and those findings are supported by substantial evidence in the record,
15 this Court’s role is not to second-guess that decision. *Fair*, 885 F.2d at 604.

16 The ALJ properly weighed the evidence and concluded the weight of the
17 record evidence supported an RFC determination that Plaintiff retained the ability
18 to stand and/or walk and sit about six hours in an eight-hour workday with normal
19 breaks. Tr. 22. The ALJ’s interpretation of the medical record is fully supported
20 by the evidence of record.

21 Based on the foregoing, the Court finds the ALJ did not err in his assessment
22 of the medical evidence. The ALJ did not err by according significant weight to
23 Dr. Ignacio, little weight to the check-box form opinion by Dr. Larson that Plaintiff
24 was unable to work, and little weight to the limitations on sitting, standing and
25 walking identified by Dr. Drenguis. The ALJ’s RFC determination is supported by
26 substantial evidence and free of legal error.

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1 **CONCLUSION**

2 Having reviewed the record and the ALJ’s findings, the Court finds the
3 ALJ’s decision is supported by substantial evidence and free of legal error.

4 Accordingly, **IT IS ORDERED:**

5 1. Defendant’s Motion for Summary Judgment, **ECF No. 16**, is
6 **GRANTED.**

7 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 14**, is **DENIED.**

8 The District Court Executive is directed to file this Order and provide a copy
9 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
10 and the file shall be **CLOSED.**

11 DATED May 6, 2016.



A handwritten signature in black ink, appearing to be "M" or "Rodgers".

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JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE