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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Denna Rasho Hasso,

No. CV-12-383-PHX-SMM

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Plaintiff,

**MEMORANDUM OF DECISION AND
ORDER**

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v.

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Carolyn W. Colvin, Commissioner of
Social Security Administration,

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Defendant.

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Plaintiff Denna Hasso seeks judicial review under 42 U.S.C. § 405(g) of the final decision of the Commissioner of Social Security (“Commissioner”), which denied her disability insurance benefits under the Social Security Act. (Doc. 1.)¹ Plaintiff asks this Court to vacate the Commissioner’s denial. (Doc. 17.) Defendant has responded, Plaintiff has replied, and the matter is fully briefed. (Doc. 18; Doc. 19.) After reviewing the briefs, and having determined that oral argument is unnecessary,² the Court finds that the Commissioner’s decision is supported by substantial evidence and free from harmful legal

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¹ “Doc.” refers to the documents in this Court’s file. “Tr.” refers to the administrative transcript. A certified copy of the administrative transcript was provided to this Court by the Commissioner of the Social Security Administration on May 1, 2012. (See Doc. 9.)

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² Plaintiff’s request for oral argument is denied because the parties have had an adequate opportunity to present their written arguments, and oral argument will not aid the Court’s decision. See Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev., 933 F.2d 724, 729 (9th Cir. 1991).

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1 error. The Court will thus affirm the decision of the Commissioner.

2 **BACKGROUND**

3 Plaintiff was born on February 22, 1964. (Tr. 20.) She has at least a high school
4 education and is able to communicate in English. (Id.) Plaintiff injured her spine while
5 lifting boxes in a workplace accident in April of 2008. (Doc. 17 at 3.) Plaintiff eventually
6 received worker’s compensation benefits as a result of this injury. (Tr. 35.) On September
7 26, 2007, a brain scan documented the presence of a meningioma: a benign, slow growing
8 tumor in the membranes of Plaintiff’s brain. (Doc. 17 at 3.) On July 30, 2010, Plaintiff
9 underwent brain surgery for the tumor. (Id. at 6.)

10 Plaintiff filed an application for Social Security disability insurance benefits on July
11 25, 2009. (Tr. 9.) In her application, she alleged that she became disabled as of April 8,
12 2008, though this date was later amended to November 1, 2008 (otherwise referred to as
13 “disability onset date”). (Id.) Plaintiff has acquired sufficient quarters of coverage under
14 the Social Security Act to remain insured through December 31, 2013. (Id.)

15 When applying for disability, Plaintiff alleged inability to work due to the back injury
16 and the effects of the brain tumor. (Id. at 14.) She alleged a variety of resulting symptoms,
17 including chronic neck and back pain, severe headaches, blurred vision, inability to
18 concentrate, memory loss, nausea, anxiety, auditory hallucinations, agoraphobia, and severe
19 depression. (Id.)

20 Plaintiff’s application was denied initially on July 13, 2010, and upon reconsideration
21 on July 13, 2010. (Id. at 9.) Plaintiff sought a hearing before an administrative law judge
22 (“ALJ”), and the hearing was held on May 5, 2011. (Id.) On May 20, 2011, the ALJ
23 determined that Plaintiff was not disabled for the purpose of receiving disability insurance
24 benefits. (Id. at 20.) This decision became the Commissioner’s final decision when the
25 Social Security Appeals Council denied review. (Id. at 1-3.)

26 **STANDARD OF REVIEW**

27 When reviewing a Social Security appeal, the Commissioner’s decision must be
28 affirmed if it is supported by substantial evidence and he applied the correct legal standards.

1 See Batson v. Commissioner of Soc. Sec. Admin., 359 F.3d 1190, 1193 (9th Cir. 2004);
2 Benton v. Barnhart, 331 F.3d 1030, 1035 (9th Cir. 2003). When reviewing the
3 Commissioner’s factual determinations, acting through the ALJ, this Court will affirm if
4 there is substantial evidence supporting those determinations. See Celaya v. Halter, 332 F.3d
5 1177, 1180 (9th Cir. 2003); Saelee v. Chater, 94 F.3d 520, 521 (9th Cir. 1996).

6 Substantial evidence is more than a mere scintilla, but less than a preponderance. See
7 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1011 (9th Cir. 2003); Mayes v. Massanari,
8 276 F.3d 453, 459 (9th Cir. 2001). Substantial evidence is relevant evidence which a
9 reasonable person might accept as adequate to support a conclusion based on the entire
10 record. Howard, 341 F.3d at 1011; Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595,
11 599 (9th Cir. 1999).

12 If the evidence can reasonably support either affirming or reversing the
13 Commissioner’s conclusion, the Court may not substitute its judgment for that of the
14 Commissioner. See Batson, 359 F.3d at 1193; McCartey v. Massanari, 298 F.3d 1072, 1075
15 (9th Cir. 2002). The ALJ is responsible for determining credibility, resolving conflicts in
16 medical testimony, and for resolving ambiguities. See Benton, 331 F.3d at 1040; Edlund v.
17 Massanari, 253 F.3d 1152, 1156 (9th Cir. 2001). The ALJ’s legal determinations are
18 reviewed *de novo*, although deference is owed to a reasonable construction of the applicable
19 statutes. See Edlund, 253 F.3d at 1156; McNatt v. Apfel, 201 F.3d 1084, 1087 (9th Cir.
20 2000).

21 **COMMISSIONER’S DISABILITY EVALUATION PROCESS**

22 To qualify for Social Security disability benefits, Plaintiff must show that she suffers
23 from a “medically determinable physical or mental impairment” that prevents her from
24 performing her prior work activities and any other substantial gainful employment that exists
25 in the national economy, and that the impairment “can be expected to result in death or which
26 has lasted or can be expected to last for a continuous period of not less than 12 months.” See
27 42 U.S.C. § 423(d)(1)(A). Further, Plaintiff’s disabled status must have existed on or before
28 her date last insured. See Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005); Tidwill v.

1 Apfel, 161 F.3d 599, 601 (9th Cir. 1998); Flaten v. Sec’y of Health & Human Servs., 44 F.3d
2 1453, 1459 (9th Cir. 1995).

3 Social Security regulations prescribe a five-step evaluation process for an ALJ to
4 determine if a claimant is disabled within the meaning of the Social Security Act. See
5 Batson, 359 F.3d at 1190, 1194; 20 C.F.R. § 404.1520. At step one, the ALJ determines if
6 the claimant is presently engaged in substantial gainful activity. See 20 C.F.R. §
7 404.1520(b). If the claimant is engaged in substantial gainful activity, then he is not disabled.
8 If not, the ALJ moves to step two to determine if the claimant has impairments or a
9 combination of impairments that significantly limit the claimant’s physical or mental ability
10 to do basic work activities and are thus “severe” within the meaning of the regulation. See
11 id. § 404.1520(c).

12 At the third step, the ALJ evaluates if the claimant’s impairment meets or medically
13 equals the criteria of a listed impairment found in Appendix 1 of Subpart P of Regulation
14 No. 404. If yes, and the impairment meets the requirements for duration under 20 C.F.R. §
15 404.1509, the claimant is disabled. If the claimant fails to meet or equal the criteria or fails
16 the duration requirement, the ALJ’s analysis moves to step four. See 20 C.F.R. §
17 404.1520(e).

18 Under step four, the ALJ determines the claimant’s residual functional capacity
19 (“RFC”), which is the continued ability of the claimant to perform physical or mental work
20 activities despite his impairment or combination of impairments.³ See id. The ALJ also
21 determines if the claimant’s RFC allows him to perform past relevant work. See id. §
22 404.1520(f). If yes, the claimant is not disabled. If not, the analysis proceeds to a fifth step
23 where the burden shifts to the Commissioner to demonstrate that the claimant is not disabled
24 by presenting evidence that the claimant retains sufficient RFC to adjust to perform other
25 jobs that exist in significant numbers either in the region where the claimant lives or in

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27 ³Mental limitations, nonexertional capacity, considers all work-related limitations and
28 restrictions that do not depend on an individual’s physical strength, such as difficulties in
concentration. SSR 96-8p.

1 several regions of the country. See 42 U.S.C. § 423(d)(2)(A); 20 C.F.R. § 404.1520(g).

2 In determining whether Plaintiff was disabled from her disability onset date,
3 November 8, 2008, the ALJ moved through steps one and two without finding that Plaintiff
4 was disabled, but finding that she had the following severe impairments: depression, anxiety,
5 chronic neck and back pain, and degenerative disc disease of the lumbosacral spine. (Tr.
6 11.) The ALJ found that Plaintiff's meningioma, however, was non-severe. (Id.) Between
7 steps three and four, the ALJ evaluated Plaintiff's RFC and found that she was limited to a
8 range of light work. (Id. at 13.) Based on Plaintiff's RFC assessment, at step four the ALJ
9 found that Plaintiff could not perform her past relevant work due to her impairments. (Id.
10 at 19-20.) However, the ALJ found at step five that Plaintiff retained sufficient RFC to
11 adjust to perform other jobs existing in significant numbers in the national economy. See
12 42 U.S.C. § 423(d)(2)(A); 20 C.F.R. § 404.1520(g). (Id. at 20-21.)

13 DISCUSSION

14 A. Plaintiff's Meningioma

15 Plaintiff argues that the ALJ erred in finding that her meningioma was not a severe
16 impairment at Step Two of the sequential evaluation process. (Doc. 17 at 26.) According
17 to Plaintiff, the evidence showed the existence of an abnormality sufficient to have at least
18 a minimal effect on her ability to work, and thus the ALJ should have found that the residual
19 effects of her meningioma operation constituted a severe impairment. (Id.) The ALJ found
20 that this was not a severe impairment because Plaintiff successfully underwent surgery of
21 the benign tumor in July of 2012, and post-operative evaluation revealed no complications
22 or acute distress, nor any abnormalities in eye movement, sensation, or muscle strength. (Tr.
23 11-12.) A complete neurological exam of Plaintiff's mental status, cranial nerves, motor,
24 sensory, and cerebellar systems was then conducted in October 2010, and results were
25 normal. (Id. at 12.) Accordingly, the ALJ found that the objective evidence of record, and
26 the lack of any evidence of worsening or deterioration related to the operation led to the
27 conclusion that this impairment was non-severe. (Id.)

28 The step-two inquiry is a *de minimis* screening device used to dispose of groundless

1 claims. See Bowen v. Yuckert, 482 U.S. 137, 153-54 (1987). An impairment or
2 combination of impairments can be found “not severe” only if the medical evidence clearly
3 establishes a slight abnormality that has “no more than a minimal effect on an individual’s
4 ability to work.” SSR 85-28, 1985 WL 56856 at *3 (1985); see also Webb v. Barnhart, 433
5 F.3d 683, 686 (9th Cir. 2005); Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996);
6 Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir. 1988) (adopting SSR 85-28).

7 Here, the Court finds that the ALJ correctly reviewed the medical evidence and
8 properly concluded that the residual effects Plaintiff’s meningioma operation did not have
9 more than a minimal effect on her ability to work, and thus was not a severe impairment.

10 **B. Step Five of the Sequential Evaluation Process**

11 At the fifth step, the burden shifts to the Social Security Administration to
12 demonstrate that the claimant is not disabled and that he can engage in some type of
13 substantial gainful activity that exists in “significant numbers” in the national economy. The
14 ALJ considers the fact that the claimant cannot do the work that he has done in the past
15 because of a severe impairment, considers the claimant’s RFC, the claimant’s age, education,
16 and work experience, and determines whether the claimant can do any other work in the
17 national economy. The ALJ will find the claimant disabled if the claimant is unable to adjust
18 to any other work. See 20 C.F.R. §§ 404.1520(g), 416.920(g). See also Lockwood v.
19 Comm’r of Soc. Sec. Admin., 616 F.3d 1068, 1071 (9th Cir. 2010) (where claimant
20 establishes that she suffers from a severe impairment that prevents her from doing past work,
21 burden shifts to the Commissioner to show that she can perform some other work); Valentine
22 v. Comm’r of Soc. Sec. Admin., 574 F.3d 685, 689 (9th Cir. 2009) (the burden shifts to
23 Commissioner at step five to show the claimant can do other kinds of work).

24 The step five analysis includes a detailed assessment of the medical evidence, the
25 claimant’s daily activities, prior work record, any functional restrictions and limitations,
26 medication and other treatment for relief of symptoms, and information and observations by
27 treating and examining physicians and third parties regarding the nature and extent of the
28 claimant’s symptoms. See 20 C.F.R. §§ 404.1529, 416.929. Credibility determinations are

1 the province of the ALJ; however, the ALJ must make specific findings which support a
2 conclusion that the claimant’s allegations of severity are not credible. See Lingenfelter v.
3 Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007); Robbins v. Soc. Sec. Admin., 466 F.3d 880,
4 883 (9th Cir. 2006).

5 **C. ALJ Rationale**

6 The ALJ rejected Plaintiff’s subjective symptom testimony, finding it not credible.
7 (Tr. 14-17.) The ALJ also found conflicting opinion evidence in this case. (Id. at 17-19.)
8 The ALJ weighed the conflicting opinions and concluded that Plaintiff was not disabled.
9 (Id.) The ALJ found that although Plaintiff could not return to her past relevant work, she
10 maintained a sufficient RFC to perform other jobs existing in significant numbers in the
11 national economy. (Tr. 20-21.)

12 **1. Plaintiff’s Subjective Symptom Testimony**

13 Plaintiff contends that the ALJ improperly refused to credit her testimony about the
14 severity of her subjective symptoms. (Doc. 17 at 19-26.)

15 “Pain of sufficient severity caused by a medically diagnosed ‘anatomical,
16 physiological, or psychological abnormality’ may provide the basis for determining that a
17 claimant is disabled.” Light v. Soc. Sec. Admin., 119 F.3d 789, 792 (9th Cir. 1997) (quoting
18 42 U.S.C. § 423(d)(5)(A) (2006)). “Once a claimant produces objective medical evidence
19 of an underlying impairment, an ALJ may not reject a claimant’s subjective complaints
20 based solely on [the] lack of objective medical evidence to fully corroborate the alleged
21 severity of [those symptoms].” Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004).
22 “[U]nless an ALJ makes a finding of malingering based on affirmative evidence thereof, he
23 or she may only find [the claimant] not credible by making specific findings as to credibility
24 and stating clear and convincing reasons for each.” Robbins v. Soc. Sec. Admin., 466 F.3d
25 880, 883 (9th Cir. 2006). Specifically:

26 The ALJ may consider at least the following factors when weighing the
27 claimant’s credibility: [the] claimant’s reputation for truthfulness,
28 inconsistencies either in [the] claimant’s testimony or between her testimony
and her conduct, [the] claimant’s daily activities, her work record, and
testimony from physicians and third parties concerning the nature, severity,

1 and effect of the symptoms of which [the] claimant complains.
2 Thomas v. Barnhart, 278 F.3d 947, 958-59 (9th Cir. 2002) (internal quotations omitted). The
3 ALJ’s findings must be “sufficiently specific to permit the court to conclude that the ALJ did
4 not arbitrarily discredit [the] claimant’s testimony.” Id. at 958.

5 Plaintiff alleged that she suffered from migraine headaches, blurred vision,
6 concentration problems, memory loss, nausea, agoraphobia, aural hallucinations, anxiety,
7 and depression. (Tr. 14.) She alleged further that due to her back injury she cannot sit,
8 stand, or lay down for long periods without taking pain medications. (Id.)

9 The ALJ acknowledged that Plaintiff’s medically determinable impairments “could
10 reasonably be expected to cause the alleged symptoms,” but concluded that her “statements
11 concerning the intensity, persistence and limiting effects of these symptoms” were not
12 credible. (Id.) The ALJ found that Plaintiff’s subjective symptom testimony was not
13 supported by the evidence as a whole, being generally inconsistent and unsupported by
14 objective findings, Plaintiff’s activities of daily living, her treatment history, and the
15 effectiveness of medications and treatment indicated in the record. (Id.)

16 The ALJ found that Plaintiff’s subjective symptom testimony was generally
17 inconsistent. (Id. at 16.) The record reflected that on numerous occasions Plaintiff failed
18 to mention to doctors any pain or symptoms associated with joint or musculoskeletal pain.
19 (Id.) The ALJ observed also that objective findings did not support Plaintiff’s subjective
20 testimony. (Id.) The ALJ noted that the objective medical diagnostic record “contained no
21 documentation of any clinical signs (e.g. muscle atrophy, unilateral reflex abnormality) of
22 nerve root impingement or other spinal pathology that could produce disabling pain,”
23 concluding that “[f]rankly, there is simply no evidence of a medical impairment which could
24 be expected to cause the alleged severity of the claimant’s symptoms and limitations.” (Id.)

25 At the hearing, Plaintiff testified that she can prepare simple meals, does dusting and
26 laundry, visits with family, pays on-line bills, goes shopping, cares for her dog, and watches
27 television. (Id. at 15.) The ALJ found that Plaintiff’s daily activities showed that she had
28 the ability to sustain some level of activity if motivated to do so, suggesting that she had

1 better physical and mental capacities than her subjective testimony indicated. (Id.)

2 The ALJ also took into account the fact that Plaintiff had been prescribed and took
3 appropriate medications for pain management, which appeared to have generally been
4 effective in controlling her symptoms. (Id.) Moreover, the ALJ noted that Plaintiff had
5 never sought or received treatment from a mental health specialist, and had stopped taking
6 anti-depression medications despite allegations of worsening depression. (Id.) These factors
7 led the ALJ to conclude that Plaintiff’s testimony of subjective mental symptoms and
8 limitations was not fully credible. (Id.)

9 The ALJ also observed that Plaintiff’s work history similarly cast doubt upon her
10 claim of disabling symptoms, in that Plaintiff continued to work after her original alleged
11 onset date, and she held herself out as ready, willing, and able to work. (Id.) Indeed,
12 Plaintiff testified at the hearing that she was willing to try to work, suggesting that she did
13 not herself believe that her impairments were completely debilitating. (Id. at 16.)

14 Finally, and most significantly, the ALJ was “convinced” that Plaintiff’s testimony
15 was not fully credible because “there was exaggeration and symptom magnification for
16 financial gain.” (Id.) The ALJ noted that all of Plaintiff’s basic needs were met with
17 unemployment benefits, and that she evinced little motivation for attempting to work if it
18 would result in loss of those benefits. (Id.) The ALJ emphasized also that evidence showed
19 that Plaintiff’s treating doctor “returned her to work with light restrictions and did not
20 consider [her] incapable of gainful employment” and informed Plaintiff that he would not
21 recommend that she be put on total disability – whereupon Plaintiff “requested to be referred
22 to another doctor who would recommend total disability.” (Id.)

23 Upon review, the Court finds that the ALJ’s findings are “sufficiently specific to
24 permit the court to conclude that the ALJ did not arbitrarily discredit claimant’s testimony.”
25 Thomas, 278 F.3d at 958. The ALJ gave specific and substantial reasons for his
26 determination that Plaintiff’s subjective symptom testimony was not credible, especially that
27 the ALJ found evidence of malingering and explicitly found that Plaintiff’s subjective claims
28 were exaggerated for financial gain. (Tr. 45.) It is not the role of this Court to second-guess

1 the ALJ's determination. Thus, the ALJ did not err in the manner in which he discounted
2 Plaintiff's subjective complaint testimony.

3 **2. Opinion Evidence**

4 Plaintiff argues that the ALJ decision is based on reversible legal error and does not
5 rest upon substantial evidence. Specifically, she argues that the ALJ erred by: (1) rejecting
6 the opinion of her treating physician, Dr. Louis Cerato, who concluded that she was unable
7 to work; and (2) assigning improper weight to the opinions of non-treating and non-
8 examining state agency physicians who opined that she had only moderate physical
9 limitations and was able to work. (Doc. 17 at 15-19.)

10 In weighing medical source opinions in Social Security cases, the Ninth Circuit
11 distinguishes among three types of physicians: (1) treating physicians, who actually treat the
12 claimant; (2) examining physicians, who examine but do not treat the claimant; and (3)
13 non-examining physicians, who neither treat nor examine the claimant. See Lester v. Chater,
14 81 F.3d 821, 830 (9th Cir. 1995).

15 Generally, more weight is given to the opinion of a treating physician than to the
16 opinions of non-treating physicians because a treating physician is employed to cure and has
17 a greater opportunity to know and observe the patient as an individual. See Andrews v.
18 Shalala, 53 F.3d 1035, 1040-41 (9th Cir. 1995). Where a treating physician's opinion is not
19 contradicted by another physician, it may be rejected only for "clear and convincing"
20 reasons, and where it is contradicted, it may not be rejected without "specific and legitimate
21 reasons" supported by substantial evidence in the record. Lester, 81 F.3d at 830. "When an
22 examining physician relies on the same clinical findings as a treating physician, but differs
23 only in his or her conclusions, the conclusions of the examining physician are not
24 'substantial evidence.'" Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007).

25 An ALJ must accord "controlling weight" to a treating doctor's opinion where
26 medically-approved diagnostic techniques support the opinion and the opinion is not
27 inconsistent with other substantial evidence. See 20 C.F.R. § 404.1527(d)(2); Lingenfelter
28 v. Astrue, 504 F.3d 1028, 1038 n.10 (9th Cir. 2007); Orn, 495 F.3d at 632-33. If the ALJ

1 does not accord the opinion controlling weight, then the ALJ must look to a number of other
2 factors in determining how much weight to give it, such as the length of the treatment
3 relationship, frequency of examination, nature and extent of treatment relationship, evidence
4 supporting the treating doctor's opinion, consistency of the opinion, and the doctor's
5 specialization. See 20 C.F.R. § 404.1527(d)(2)-(d)(6).

6 Similarly, the Ninth Circuit generally holds that greater weight is to be given to the
7 opinion of an examining physician over and above the opinion of a non-examining
8 physician. See Andrews, 53 F.3d at 1041. As with a treating physician, the ALJ may reject
9 the opinion of an examining physician, even if contradicted by a non-examining physician,
10 only by providing specific, legitimate reasons that are supported by substantial evidence in
11 the record. See Moore v. Comm'r of Soc. Sec. Admin., 278 F.3d 920, 924 (9th Cir. 2002).

12 It is solely the duty of the ALJ to weigh the evidence and resolve conflicts in the
13 record. See Edlund, 253 F.3d at 1156. An ALJ need not accept the opinion of any
14 physician, including a treating physician, if that opinion is brief, conclusory, and
15 inadequately supported by clinical findings. See Thomas v. Barnhart, 278 F.3d 947, 957
16 (9th Cir. 2002). However, "an ALJ does not provide clear and convincing reasons for
17 rejecting an examining physician's opinion by questioning the credibility of the patient's
18 complaints where the doctor does not discredit those complaints and supports his ultimate
19 opinion with his own observations." Ryan v. Comm'r of Soc. Sec. Admin., 528 F.3d 1194,
20 1199-1200 (9th Cir. 2008).

21 Treating Physician Dr. Louis Cerato

22 Dr. Cerato was Plaintiff's treating physician, and submitted a medical assessment and
23 pain residual functional capacity assessment in February of 2011. (Tr. 18.) Therein, Dr.
24 Cerato listed Plaintiff's impairments as including: "lumbar thoracic, cervical pain, shooting
25 pains in head, depression/anxiety, and meningioma with headaches," and opined that she was
26 limited to "less than sedentary" exertional levels, with "lifting/carry less than 10 pounds,
27 standing/walking less than 2 hours, and sitting for less than 2 hours in an 8-hour workday."

28 (Id.)

1 The ALJ decision gave “minimal weight” to this opinion, finding that the Doctor’s
2 opinions were inconsistent with the greater medical evidence of record and Plaintiff’s
3 activities of daily living, unsupported by treating records, and appeared to be based heavily
4 on Plaintiff’s subjective reports of her symptoms and limitations, which the ALJ had already
5 noted were subject to considerable suspicion due to Plaintiff’s exaggeration for financial
6 benefit. (Id. at 18-19.) The issue before the Court is whether the ALJ provided specific and
7 legitimate reasons supported by substantial evidence in the record for rejecting Dr. Cerato’s
8 opinion. See Lester, 81 F.3d at 830 (stating that a treating physician’s opinion may not be
9 rejected without “specific and legitimate reasons” supported by substantial evidence in the
10 record). Plaintiff argues that the ALJ erred in not according full weight to the doctor’s
11 opinion, disagreeing with the ALJ’s contention that the opinion lacks the support of
12 objective clinical or laboratory diagnostic findings. (Doc. 17 at 15-16.)

13 Here, the Court disagrees with Plaintiff that the ALJ failed to provide specific and
14 legitimate reasons supported by substantial evidence in the record for rejecting Dr. Cerato’s
15 opinion. The ALJ discounted this treating physician’s opinion primarily because the ALJ
16 found that the doctor’s notes mainly summarized Plaintiff’s subjective complaints,
17 diagnoses, and medications – and as discussed previously, the ALJ set forth specific, clear
18 and convincing reasons for discounting Plaintiff’s subjective symptom testimony. Indeed,
19 the ALJ cited evidence that Plaintiff’s treating physician himself discredited Plaintiff’s
20 complaints by refusing to recommend total disability. (Tr. 45.) Thus, the ALJ provided
21 specific and legitimate reasons supported by substantial evidence in the record for
22 discounting the doctor’s opinion.

23 In contrast to the opinions of Dr. Cerato, the ALJ accorded “significant weight” to the
24 opinions of the State agency’s reviewing physicians and psychologists, who completed RFC
25 assessments. (Tr. 19.) These physicians stated that Plaintiff was capable of performing “a
26 range of light-exertional work with occasional climbing ramps/stairs, stooping, kneeling,
27 crouching, and crawling; no climbing of ladders, ropes, scaffolds; frequently balancing; with
28 some environmental restrictions, and limited to simple, repetitive work with little stress and

1 occasional interaction with public.” (Id.) The ALJ stated that he relied on these non-
2 examining doctors’ opinions because they were “soundly based on the objective findings,
3 progress notes and treating notes” and were “generally consistent with the consultative
4 examining physicians and with the overall medical evidence of record as a whole.” (Id.)

5 The Court disagrees with Plaintiff that the ALJ improperly accorded more weight to
6 the State agency doctors’ opinions. As discussed above, the ALJ explicitly discussed his
7 rejection of the treating physician’s opinions, and set forth specific, supported reasons for
8 instead crediting the opinions of the non-examining state agency physicians. See Nguyen
9 v. Chater, 100 F.3d 1462, 1464 (9th Cir. 1996). Thus, the ALJ’s final decision that Plaintiff
10 was not disabled under the Social Security Act is supported by substantial evidence and
11 based on the correct legal standards.

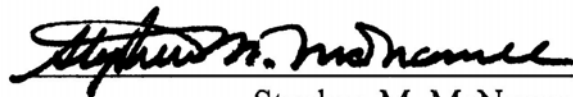
12 **CONCLUSION**

13 Accordingly, for the foregoing reasons,

14 **IT IS HEREBY ORDERED affirming** the decision denying disability benefits.

15 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment in
16 favor of Defendant and terminate this action.

17 DATED this 26th day of April, 2013.

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20 Stephen M. McNamee
21 Senior United States District Judge
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