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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 Deborah Salazar,

No. 12-CV-00803-PHX-GMS

9 Plaintiff,

**ORDER**

10 v.

11 Carolyn W. Colvin, Commissioner of Social  
12 Security,<sup>1</sup>

13 Defendant.

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15 Pending before the Court is the appeal of Plaintiff Deborah Salazar, which  
16 challenges the Social Security Administration's decision to deny benefits. (Doc. 1.)  
17 For the reasons set forth below, the Court affirms the Social Security Administration's  
18 decision.

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20 **BACKGROUND**

21 On May 10, 2006, Salazar applied for disability insurance benefits, alleging a  
22 disability onset date of March 29, 2006. (R. at 234.) Salazar's date last insured ("DLI")  
23 for disability insurance benefits, and thus the date on or before which she must have been  
24 disabled, was December 31, 2010. (*Id.* at 23.) Salazar's claim was denied both initially  
25 and upon reconsideration. (*Id.* at 116-17, 134-40, 142-44.) Salazar then appealed to an

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27 <sup>1</sup> Carolyn W. Colvin became the Acting Commissioner of the Social Security  
28 Administration on February 14, 2013. Pursuant to Rule 25(d) of the Federal Rules of  
Civil Procedure and 42 U.S.C. § 405(g), Carolyn W. Colvin is substituted for Michael J.  
Astrue as the Defendant in this suit.

1 Administrative Law Judge (“ALJ”). (*Id.* at 145-46.) The ALJ conducted a hearing on the  
2 matter on April 21, 2008. (*Id.* at 70-96.)

3 In evaluating whether Salazar was disabled, the ALJ undertook the five-step  
4 sequential evaluation for determining disability.<sup>2</sup> (*Id.* at 25-35.) At step one the ALJ  
5 determined that Salazar had not engaged in substantial gainful activity since the alleged  
6 onset date. (*Id.* at 25.) At step two, the ALJ determined that Salazar suffered from severe  
7 impairments including recovery from multiple surgeries, fibromyalgia, headaches,  
8 depression, and anxiety. (*Id.*) At step three, the ALJ determined that none of these  
9 impairments, either alone or in combination, met or equaled any of the Social Security  
10 Administration’s listed impairments. (*Id.*)

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13 <sup>2</sup> The five-step sequential evaluation of disability is set out in 20 C.F.R. §  
14 404.1520 (governing disability insurance benefits) and 20 C.F.R. § 416.920 (governing  
15 supplemental security income). Under the test:

16 A claimant must be found disabled if she proves: (1) that she  
17 is not presently engaged in a substantial gainful activity[,] (2)  
18 that her disability is severe, and (3) that her impairment meets  
19 or equals one of the specific impairments described in the  
20 regulations. If the impairment does not meet or equal one of  
21 the specific impairments described in the regulations, the  
22 claimant can still establish a prima facie case of disability by  
23 proving at step four that in addition to the first two  
24 requirements, she is not able to perform any work that she has  
25 done in the past. Once the claimant establishes a prima facie  
26 case, the burden of proof shifts to the agency at step five to  
27 demonstrate that the claimant can perform a significant  
28 number of other jobs in the national economy. This step-five  
determination is made on the basis of four factors: the  
claimant’s residual functional capacity, age, work experience  
and education.

27 *Hoopai v. Astrue*, 499 F.3d 1071, 1074–75 (9th Cir. 2007) (internal citations and  
28 quotations omitted).

1 At that point, the ALJ made a determination of Salazar's residual functional  
2 capacity ("RFC"),<sup>3</sup> concluding that Salazar could perform a range of sedentary work. (*Id.*  
3 at 27.) The ALJ thus determined at step four that Salazar did not retain the RFC to  
4 perform her past relevant work as a child protection services supervisor, therapist, or  
5 psychiatric social worker. (*Id.* at 256.) The ALJ therefore reached step five, determining  
6 that Salazar could perform a significant number of other jobs in the national economy  
7 that met her RFC limitations. (*Id.* at 33-35.) Given this analysis, the ALJ concluded that  
8 Salazar was not disabled. (*Id.* at 35.)

9 On appeal, the Appeals Council remanded the claim to the ALJ for a new hearing.  
10 The Council directed the ALJ to give further consideration to Salazar's maximum  
11 residual functional capacity with reference to the treating and non-treating source opinion  
12 evidence and to obtain supplemental evidence from a vocational expert to clarify the  
13 effect of the assessed limitations on Salazar's occupational base. (*Id.* at 131-33.) The ALJ  
14 held another hearing on January 4, 2010. (*Id.* at 97-115.) The ALJ once again found that  
15 Salazar was not disabled. (*Id.* at 19-41.) The Appeals Council denied Salazar's second  
16 request for review. (*Id.* at 1-6.)

17 Salazar filed the complaint underlying this action on April 17, 2012, seeking this  
18 Court's review of the ALJ's denial of benefits.<sup>4</sup> (Doc. 1.) The matter is now fully briefed  
19 before this Court. (Docs. 20, 23, 24.)

## 20 DISCUSSION

### 21 I. Standard of Review

22 A reviewing federal court will address only the issues raised by the claimant in the  
23 appeal from the ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir.  
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25 <sup>3</sup> RFC is the most a claimant can do despite the limitations caused by his  
26 impairments. *See* SSR 96-8p (July 2, 1996).

27 <sup>4</sup> Salazar was authorized to file this action by 42 U.S.C. § 405(g) ("Any individual,  
28 after any final decision of the Commissioner of Social Security made after a hearing to  
which he was a party . . . may obtain a review of such decision by a civil action . . .").

1 2001). A federal court may set aside a denial of disability benefits only if that denial is  
2 either unsupported by substantial evidence or based on legal error. *Thomas v. Barnhart*,  
3 278 F.3d 947, 954 (9th Cir. 2002). Substantial evidence is “more than a scintilla but less  
4 than a preponderance.” *Id.* (quotation omitted). “Substantial evidence is relevant evidence  
5 which, considering the record as a whole, a reasonable person might accept as adequate  
6 to support a conclusion.” *Id.* (quotation omitted).

7 However, the ALJ is responsible for resolving conflicts in testimony, determining  
8 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
9 Cir. 1995). “When the evidence before the ALJ is subject to more than one rational  
10 interpretation, we must defer to the ALJ’s conclusion.” *Batson v. Comm’r of Soc. Sec.*  
11 *Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004). This is so because “[t]he [ALJ] and not the  
12 reviewing court must resolve conflicts in evidence, and if the evidence can support either  
13 outcome, the court may not substitute its judgment for that of the ALJ.” *Matney v.*  
14 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992) (citations omitted).

## 15 **II. Analysis**

16 Salazar argues that the ALJ erred by: (1) rejecting the opinions of Salazar’s  
17 treating physician and other opinion evidence (Doc. 20 at 5-8), (2) misinterpreting  
18 evidence to Salazar’s detriment (*id.* at 8-9), and (3) implicitly rejecting Salazar’s  
19 testimony for being incredible (*id.* at 9). The Court will address each argument in turn.

### 20 **A. Rejection of Medical Opinion Evidence**

#### 21 **1. Treating Physician’s Opinion**

22 “The medical opinion of a claimant’s treating physician is entitled to special  
23 weight.” *Rodriguez v. Bowen*, 876 F.2d 759, 761 (9th Cir. 1989) (internal quotation  
24 marks and citation omitted). This is because the treating physician “is employed to cure  
25 and has a greater opportunity to know and observe the patient as an individual.” *Andrews*  
26 *v. Shalala*, 53 F.3d 1035, 1040–41 (9th Cir. 1995). If, as here, another doctor counters the  
27 treating physician’s opinion, “the ALJ may not reject this opinion without providing  
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1 specific and legitimate reasons supported by substantial evidence in the record.” *Orn v.*  
2 *Astrue*, 495 F.3d 625, 632 (9th Cir. 2007) (internal quotation marks and citation omitted).  
3 “The ALJ can meet this burden by setting out a detailed and thorough summary of the  
4 facts and conflicting clinical evidence, stating his interpretation thereof, and making  
5 findings.” *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988). “In many cases, a  
6 treating source’s medical opinion will be entitled to the greatest weight and should be  
7 adopted, even if it does not meet the test for controlling weight.” *Orn*, 495 F.3d at 632  
8 (citing SSR 96-2p<sup>5</sup> at 4, 61 Fed. Reg. at 34,491). However, “the ALJ need not accept the  
9 opinion of any physician, including a treating physician, if that opinion is brief,  
10 conclusory, and inadequately supported by clinical findings.” *Thomas v. Barnhart*, 278  
11 F.3d 947, 957 (9th Cir. 2002).

12 Salazar contends that the ALJ gave insufficient weight to the opinion of her  
13 treating physician, Dr. Ralph Bennett, on the extent and effects of her  
14 impairments. Among the records submitted by Dr. Bennett, the ALJ considered two  
15 medical source statements (“MSS”) and a Physician’s Supplemental Statement (“PSS”).  
16 The ALJ accorded “very little weight” to the MSSs for lack of diagnostic support and  
17 found that the PSS conflicts with other medical records. (R. at 33.) Thus the ALJ declined  
18 to give controlling weight to the treating physician’s opinion. (*Id.* at 32.) Because Dr.  
19 Bennett’s opinion was controverted by the opinion of the state agency physician, Dr.  
20 John Spriggs, the ALJ must give specific and legitimate reasons supported by substantial  
21 evidence in the record for rejecting Dr. Bennett’s opinion. *See Orn*, 495 F.3d at 632;  
22 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995); *Embrey*, 849 F.2d at 421.

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25 <sup>5</sup> Social Security Rulings (SSRs) “do not carry the ‘force of law,’ but they are  
26 binding on ALJs nonetheless.” *Bray v. Comm’r Soc. Sec. Admin.*, 554 F.3d 1219, 1224  
27 (9th Cir. 2009). They “reflect the official interpretation of the [SSA] and are entitled to  
28 some deference as long as they are consistent with the Social Security Act and  
regulations.” *Id.* (alteration in original) (quoting *Avenetti v. Barnhart*, 456 F.3d 1122,  
1124 (9th Cir. 2006)).

1           In both MSSs dated October 6, 2006 and April 17, 2008, Dr. Bennett endorsed  
2 extreme limitation and disability. He completed checklist-style forms that reflected  
3 Salazar’s limited ability to sit and stand for a total of three hours during an eight-hour  
4 work day, and pain and fatigue that would severely limit her ability to function. (*Id.* at  
5 585-87, 777-79.) Dr. Bennett concluded that Salazar would not be able to lift much  
6 weight, had limited hand control, could occasionally bend and squat, and had  
7 environmental limitations. (*Id.*) His opinion was that Salazar would not be able to  
8 perform even sedentary work for extended periods of time.

9           The ALJ found it to be a “major flaw” that the October 6, 2006 MSS was not  
10 supported by objective medical evidence. (*Id.* at 33.) On the MSS, Dr. Bennett marked  
11 “yes” to the question “[c]an the above [proffered limitations] be reasonably expected to  
12 result from a medically determinable impairment as set forth in the diagnostic impression  
13 in your narrative report?” (*Id.* at 587.) But no concurrent narrative report was provided.  
14 The ALJ presumed that “Dr. Bennett relied primarily on the subjective reports of  
15 [Salazar] in formulating his opinion” and discounted the MSS as a result. (*Id.* at 33.)

16           There is substantial evidence in the record for the ALJ’s conclusion. Dr. Bennett  
17 last examined Salazar almost one year before the MSS on October 18, 2005, (*id.* at 509),  
18 and prior to her alleged onset of disability on March 29, 2006. Salazar’s last clinical visit  
19 was three months prior to the MSS on June 27, 2006. (*Id.* at 505.) That visit was with  
20 Carol Swenson, a nurse at Dr. Bennett’s clinic, who also authored the clinical notes  
21 summarizing the visit. Because Swenson is a nurse practitioner, her opinion is not  
22 accorded the same weight as that of a treating physician and the Commissioner. *Gomez v.*  
23 *Chater*, 74 F.3d 967, 970–71 (9th Cir.), *cert denied*, 519 U.S. 881 (1996) (noting that  
24 opinions from “other sources” including nurse practitioners may be given less weight  
25 than those from “acceptable medical sources”); *see* 20 C.F.R. §§ 404.1513(d),  
26 416.913(d). While Swenson recommended that Salazar’s leave from work be extended,  
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1 she did not suggest that Salazar would not be able to work again for a period of one year  
2 or more. (*Id.* at 505, 506, 508.) Thus, the ALJ had substantial evidence to accord the  
3 October 6, 2006 MSS “very little weight.”

4 The ALJ diminished also the weight of Dr. Bennett’s April 17, 2008 MSS because  
5 it did not “identify any impairment or diagnostic assessment associated with the proffered  
6 limitations” and seemed to be based on Salazar’s subjective complaints. (R. at 33.)  
7 Further, it was noted that the April 17, 2008 MSS was essentially the same document as  
8 the October 6, 2006 MSS “without change or modification.” (*Id.*) Before the second  
9 MSS, Dr. Bennett had last examined Salazar on February 11, 2008. During that visit, Dr.  
10 Bennett stated that Salazar had good flexion and extension, and full abduction of the  
11 shoulders, good range of motion in the elbows and wrists with no swelling, crepitation or  
12 tenderness noted, and a good range of motion in the knees and ankles with no swelling,  
13 crepitation or tenderness noted. (*Id.*) He determined that muscle strength was “5/5” in the  
14 upper and lower extremities. (*Id.*) That diagnosis casts doubt on the severe limitations  
15 proffered in the April 17, 2008 MSS. The ALJ had substantial evidence to give the April  
16 17, 2008 MSS “very little weight.”

17 The ALJ finally considered Dr. Bennett’s April 8, 2008 PSS but gave it minimal  
18 weight. (R. at 33.) In the PSS, Dr. Bennett concluded that Salazar would not be able to  
19 work in any capacity with “reasonable continuity” due to fibromyalgia, neck pain, and  
20 knee osteoarthritis. (*Id.* at 780.) He stated that Salazar could not sit for prolonged periods  
21 of time, bend, or stoop. Although Dr. Bennett linked his assessment to her conditions, the  
22 PSS did not reference diagnostic or clinical findings. (*Id.* at 33.) The ALJ noted an  
23 inconsistency between Dr. Bennett’s diagnosis of knee osteoarthritis on the PSS and his  
24 clinical examination notes which “raises questions concerning the remaining portions of  
25 his assessment.” (*Id.* at 33); *see Tommasetti*, 533 F.3d at 1041; *Weetman v. Sullivan*, 877  
26 F.2d 20, 23 (9th Cir.1989) (rejecting a treating physician’s opinion because it was  
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1 inconsistent with contemporaneous medical notes). Specifically, Dr. Bennett’s February  
2 11, 2008 notes stated that Salazar had a good range of motion in the knees and ankles  
3 with no swelling, crepitation or tenderness noted. That is a legitimate reason to give the  
4 PSS minimal weight. The ALJ did not err in weighing Dr. Bennett’s opinion.

5 **B. Misinterpretation of Evidence to Salazar’s Detriment**

6 **1. Absenteeism from Surgeries**

7 Salazar contends that the ALJ did not address the impact of rehabilitation after her  
8 surgeries on her ability to sustain employment for twelve months. The Social Security  
9 Act defines a disability as the “inability to engage in any substantial gainful activity by  
10 reason of any medically determinable physical or mental impairment which . . . has lasted  
11 or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C.  
12 § 423(d)(1)(A). Salazar had five surgical procedures during a period of sixteen months  
13 between June 2008 and October 2009. Specifically, she had surgeries on the following  
14 extremities: left shoulder on June 17, 2008 (R. at 828), left hand on October 2, 2008 (*id.*  
15 at 1022), right hand on December 30, 2008 (*id.* at 1016), bilateral thumb trigger finger  
16 releases on July 30, 2009 (*id.* at 1005-08), and left knee on October 29, 2009 (*id.* at  
17 1044). Salazar argues that no employer would have hired her for twelve months because  
18 the surgeries and periods of convalescence after her surgeries would lead to excessive  
19 absenteeism from work. Salazar points to testimony of the vocational expert that if an  
20 employee needed to have several surgical procedures over an 18-month period and had to  
21 take one month of leave for each surgery, “most employers wouldn’t keep a job waiting  
22 for . . . that long.” (*Id.* at 113.) The ALJ did not discuss the effect of absenteeism on  
23 Salazar’s ability to sustain work when reviewing her surgical history. (*See id.* at 28-33.) It  
24 is possible that her surgeries and rehabilitation would require leave from even sedentary  
25 work. However, Salazar does not point to evidence that establishes the potential duration  
26 of leave for each surgery and whether physical therapy would have also required her to  
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1 take leave. The Court cannot determine whether the cumulative effect of the surgeries  
2 would have prevented her from engaging in substantial gainful activity for a period of  
3 twelve months or longer. Because Salazar did not carry her burden to provide or even  
4 elucidate such evidence, the Court will not remand for such a determination.

## 5 **2. Impairments in Combination**

6 Salazar asserts that the ALJ failed to consider her impairments in combination for  
7 a finding of disability. A combination of impairments may result in a finding of disability  
8 even where no single impairment taken alone would result in such a finding. 20 C.F.R. §  
9 404.1523. If a claimant has two or more concurrent impairments which, when considered  
10 in combination, are severe, the ALJ must also determine whether the combined effect of  
11 the claimant's impairments can be expected to continue to be severe for twelve months.  
12 *Id.* § 404.1522(b). However, if one or more of the claimant's impairments improves or is  
13 expected to improve within twelve months, so that the combined effect of the claimant's  
14 remaining impairments is no longer severe, the claimant does not meet the twelve month  
15 duration test. *Id.* § 404.1522(b).

16 The ALJ found that although Salazar's surgeries suggested significant impairment  
17 and would normally weigh in her favor, that weight "is offset by the fact the surgeries  
18 were generally successful in either resolving or significantly reducing [her] symptoms of  
19 pain and limitation." (R. at 27.) The ALJ concluded that Salazar's medical impairments  
20 relating to her cervical spine, left shoulder, left knee, and hands "were either resolved or  
21 rendered mild as a result of surgery." (*Id.* at 27-28.) For example, on March 29, 2006,  
22 Salazar had cervical discectomy and fusion surgery on her spine. On April 7, 2006,  
23 Salazar felt the surgery was a success and preoperative pain was largely resolved,  
24 vitiating the need for pain medication. Diagnostic findings presented mild impairment of  
25 her cervical spine in the following months. (*Id.* at 791, 783.) However, during her last  
26 examination, Dr. Jenpin Weng found that Salazar's head and neck were "atraumatic" and  
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1 her cervical range of motion was “pain free and within functional limits.” (*Id.* at 1031.)  
2 After Salazar underwent left shoulder arthroscopy on June 17, 2008, she pursued physical  
3 therapy and had frequent follow-up visits. She stated that the shoulder was doing “very  
4 well” and back to normal activity by December 1, 2008. (*Id.* at 822.) After Salazar’s left  
5 knee arthroscopy on October 29, 2009, the ALJ noted that there were no records of  
6 further visits with her treating orthopedic surgeon “suggesting that [her] left knee  
7 problem was either resolved or significantly improved as a result of surgery.” (*Id.* at 29.)  
8 On October 2 and December 30 of 2008, Salazar underwent surgery on her left and right  
9 hands, respectively. Salazar and her treating sources believed her surgeries were “very  
10 successful.” (*Id.* at 843.) Finally, after complaining of pain in her thumb joints, Salazar  
11 received open thumb trigger finger releases on July 30, 2009. During a follow-up visit on  
12 October 21, 2009, her treating source no longer diagnosed her with carpal tunnel  
13 syndrome and Salazar no longer complained of hand or wrist pain. (*Id.* at 1040.)

14 The ALJ considered Salazar’s impairments individually and in combination but  
15 found the surgeries reduced the impact of those impairments on Salazar’s ability to work.  
16 (*Id.* at 33.) Substantial evidence supports the finding that the combined effect of Salazar’s  
17 impairments was no longer severe as a matter of law because they improved or were  
18 expected to improve within 12 months. *See* 20 C.F.R. § 404.1522(b); *Magallanes v.*  
19 *Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (The ALJ’s decision to deny benefits will be  
20 overturned “only if it is not supported by substantial evidence or is based on legal error.”)  
21 (internal citation omitted).

### 22 **3. Severity of Fibromyalgia Symptoms**

23 Salazar further contends that the ALJ erred in assessing the severity of her  
24 impairments resulting from fibromyalgia. The ALJ found Salazar’s fibromyalgia to be a  
25 medically determinable severe impairment. (R. at 25, 31.) The Commissioner argues that  
26 not all severe impairments are disabling and the ALJ had to determine the limitations  
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1 caused by the impairment. On October 18, 2005, Salazar’s treating physician, Dr.  
2 Bennett, had found all diffuse tender points to be positive and diagnosed fibromyalgia.  
3 (*Id.* at 509.) However, the ALJ noted that her fibromyalgia improved in the following  
4 months and her symptoms were moderate. On November 29, 2007, Salazar reported  
5 improvement in symptoms after using prescribed medication. (*Id.* at 583.) During a  
6 follow-up visit on April 29, 2008, Dr. Bennett noted that although Salazar complained of  
7 numbness in her legs and arms, an EMG study was unremarkable. (*Id.* at 785.) Later  
8 clinical notes document “moderate fibromyalgia” and besides occasional flare-ups she  
9 “had been doing well.” (*Id.* at 897, 900.) There was substantial evidence in the record to  
10 find that although Salazar’s fibromyalgia was a severe impairment, the symptoms were  
11 moderate and improving such that they would not preclude basic work activity.

12 Salazar also argues that the ALJ erred in finding that she had not complied with  
13 treatment options for fibromyalgia. The ALJ noted that in March 2009, Salazar was  
14 advised to maintain a regimen of regular exercise, stress reduction, and aquatic physical  
15 therapy as well as to manage her sleep and mood disorders in order to control her  
16 fibromyalgia symptoms. (*Id.* at 31, 893.) However, she did not return to physical therapy  
17 until May 4, 2009. (*Id.* at 847.) The ALJ further noted there are no records that establish  
18 Salazar continued physical therapy after that date, pursued stress reduction techniques, or  
19 engaged in regular exercise. (*Id.* at 31.) The ALJ found that “there is insufficient reliable  
20 objective evidence that she has fully complied with her treatment options.” (*Id.* at 31.)  
21 Salazar contends that “there is no specific treatment for fibromyalgia” but does not cite to  
22 evidence to support that statement. (Doc. 20 at 8.) The ALJ’s findings that Salazar’s  
23 moderate symptoms from fibromyalgia did not preclude basic work activity and that she  
24 did not comply with her therapy are supported by substantial evidence in the record. *See*  
25 *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (“When the evidence before the  
26 ALJ is subject to more than one rational interpretation, the Court must defer to the ALJ’s  
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1 conclusion.”). Thus, the ALJ did not err in interpreting the medical evidence in the  
2 record.

### 3 **C. Implicit Rejection of Salazar’s Credibility**

4 Salazar asserts that the ALJ did not discuss her subjective complaints of pain nor  
5 her credibility related to those complaints. Therefore, the ALJ erred by implicitly  
6 rejecting her credibility. The ALJ must engage in a two-step analysis in determining  
7 whether a claimant’s testimony regarding her subjective pain or symptoms is credible.  
8 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007). The ALJ must first  
9 “determine whether the claimant has presented objective medical evidence of an  
10 underlying impairment which could reasonably be expected to produce the pain or other  
11 symptoms alleged.” *Id.* at 1036. If she has, and the ALJ has found no evidence of  
12 malingering, then the ALJ may reject the claimant’s testimony “only by offering specific,  
13 clear and convincing reasons for doing so.” *Id.* If an ALJ finds that a claimant’s  
14 testimony relating to the intensity of her pain and other limitations is unreliable, the ALJ  
15 must make a credibility determination citing the reasons why the testimony is  
16 unpersuasive. *See Bunnell v. Sullivan*, 947 F.2d 341 (9th Cir. 1991). The ALJ must  
17 specifically identify what testimony is credible and what testimony undermines the  
18 claimant’s complaints. *See Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599  
19 (9th Cir. 1999)

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21 Here, at the first step, the ALJ found that Salazar’s medically determinable  
22 impairments could reasonably be expected to cause the alleged symptoms. (R. at 32.)  
23 However, at the second step, the ALJ found that Salazar’s “statements are not fully  
24 credible concerning the severity and extent of her limitations” and that “[n]either the  
25 severity nor the extent is supported by the medical evidence of record.” (*Id.*) Since the  
26 ALJ did not find any evidence of malingering, his reasons for rejecting Salazar’s  
27 subjective complaints must be specific, clear and convincing. *Lingenfelter*, 504 F.3d at  
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1 1036. The Commissioner contends that the ALJ discussed Salazar’s complaints but found  
2 that they were not entirely credible.

3 During the hearing, Salazar complained about pain in her lower back and knees  
4 from standing for extended periods of time, pain from lifting her right shoulder, daily  
5 headaches, and mild depression. (R. at 104, 106-07.) She testified that she could not  
6 sustain full-time employment because of these “pain issues.” (*Id.* at 107.) The ALJ found  
7 Salazar somewhat credible to the extent she alleged “some bilateral shoulder and  
8 fibromyalgia pain associated with her impairments.” (*Id.* at 33.) He adjusted the RFC to  
9 accommodate Salazar’s limitations and pain symptoms, finding that she could still sustain  
10 basic work activity. (*Id.*) While discussing Salazar’s various impairments, the ALJ  
11 implicitly noted medical records that were inconsistent with Salazar’s complaints. *See*  
12 *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (upholding adverse credibility  
13 determination when there are inconsistencies with other medical evidence including  
14 physicians’ notes and diagnostic findings); 20 C.F.R. § 404.1529 (the ALJ will consider  
15 the extent to which the claimant’s symptoms can reasonably be accepted as consistent  
16 with the objective medical evidence). Regarding Salazar’s back pain, the ALJ pointed to  
17 evidence that on January 8, 2009, Dr. Jenpin Weng found that her cervical range of  
18 motion was “pain free and within functional limits.” (R. at 28, 1031.) Concerning her  
19 knee pain, the ALJ noted that after Salazar’s left knee arthroscopy on October 29, 2009,  
20 there were no records of further clinical visits during the two months before the hearing,  
21 “suggesting that [her] left knee problem was either resolved or significantly improved as  
22 a result of surgery.” (*Id.* at 29.)

23 Some of Salazar’s pain symptoms were controlled through medication. *See* 20  
24 C.F.R. 404.1529(c)(3)(iv) (the ALJ will consider the effectiveness of medication in  
25 relieving pain when evaluating intensity and persistence of symptoms); *Molina v. Astrue*,  
26 674 F.3d 1104, 1113 (9th Cir. 2012) (holding that an adverse credibility determination  
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1 against claimant was reasonably supported by physicians' conclusions that condition was  
2 controllable by medication). The ALJ cited progress notes by Salazar's neurologist, Dr.  
3 Gilbert Toffol, in finding that Salazar's headache impairment was stable and that  
4 prescription Topamax effectively controlled the pain symptoms. (R. at 31, 843.) Salazar's  
5 back pain was similarly reduced with a series of steroid injections administered by Dr.  
6 David Herbert. (*Id.* at 939.) Her fibromyalgia symptoms also improved after a regimen of  
7 prescription Lyrica and she was "feeling better" as a result. (*Id.* at 583.)

8 The ALJ considered Salazar's complaints of anxiety and depression but found that  
9 they did not limit her daily activities, social interactions, or cognitive functioning to the  
10 extent that they would be disabling. (R. at 32); *Molina*, 674 F.3d at 1113 ("The ALJ may  
11 discredit a claimant's testimony when the claimant reports participation in everyday  
12 activities indicating capacities that are transferable to a work setting.") (internal citations  
13 omitted). The ALJ noted that she was able to do light housework, prepare simple meals,  
14 tend to her personal needs, get along with authority figures, visit friends and relatives,  
15 follow written instructions very well, and handle a savings account and bank book. (*Id.* at  
16 32, 288.)

17 Lastly, the ALJ found that Salazar's failure to comply with therapy and to pursue  
18 treatment reduced her credibility. *Id.* ("In evaluating the claimant's testimony, the ALJ  
19 [may consider] . . . unexplained or inadequately explained failure to seek treatment or to  
20 follow a prescribed course of treatment.") (internal quotation and citation omitted). The  
21 record reveals that Salazar did not fully comply with recommended therapy for her  
22 impairments. On May 2, 2006, it was noted that that Salazar did not go to therapy for her  
23 impairments and "is encouraged to work with the therapy and see if things improve  
24 enough for her to return to work in June." (R. at 507.) During a visit on October 14, 2009,  
25 Dr. Craig Weinstein noted that Salazar had a worsening of knee pain but she had stopped  
26 going to prescribed physical therapy. (*Id.* at 1038.) Although Salazar complained of  
27

1 depression and anxiety, the ALJ noted that “there is no evidence she has ever sought any  
2 formal mental health treatment [or] participated in any in-patient counseling.” (*Id.* at 32.)

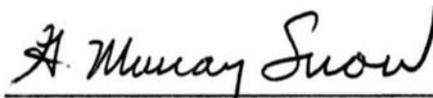
3 The ALJ did not implicitly reject Salazar’s credibility without addressing it. He  
4 provided specific, clear and convincing reasons when discounting Salazar’s credibility  
5 relating to her pain complaints during the hearing. Further, the ALJ considered the  
6 complaints he found credible when determining the appropriate RFC and limitations on  
7 her ability to work.

8 **CONCLUSION**

9 The ALJ made no error of law and there is substantial evidence to support the  
10 ALJ's denial of benefits.

11 **IT IS THEREFORE ORDERED** that the ALJ's decision is **AFFIRMED**. The  
12 Clerk of Court is directed to terminate this case and enter judgment accordingly.

13 Dated this 20th day of June, 2013.

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17 \_\_\_\_\_  
18 G. Murray Snow  
19 United States District Judge  
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