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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**MARIA SANDOVAL,**  
**Plaintiff,**  
**v.**  
**CAROLYN W. COLVIN,<sup>1</sup>**  
**Acting Commissioner of Social**  
**Security,**  
**Defendant.**

**) NO. CV 13-0482-MAN**  
**) MEMORANDUM OPINION**  
**) AND ORDER**

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Plaintiff filed a Complaint on January 25, 2013, seeking review of a decision by the Social Security Commissioner ("Commissioner") that plaintiff ceased to be eligible for a period of disability ("POD") and disability insurance benefits ("DIB") on May 1, 2010. On February 27, 2013, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. The parties filed a Joint Stipulation on January 16, 2014, in which: plaintiff seeks an order reversing the Commissioner's decision and awarding benefits or, alternatively, remanding for further administrative proceedings; and the Commissioner requests that her decision be affirmed or, alternatively, remanded for further administrative proceedings.

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<sup>1</sup> Carolyn W. Colvin became the Acting Commissioner of the Social Security Administration on February 14, 2013, and is substituted in place of former Commissioner Michael J. Astrue as the defendant in this action. (See Fed. R. Civ. P. 25(d).)

1 The Court has taken the parties' Joint Stipulation under submission without oral argument.

2  
3 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**  
4

5 On June 24, 2002, plaintiff, filed an application for a POD and DIB in which she alleged an  
6 inability to work since September 8, 1998. (See Administrative Record ("A.R.") 110.) By decision  
7 dated June 12, 2004, Administrative Law Judge Barry S. Brown ("ALJ Brown") determined that  
8 plaintiff, who was born on March 12, 1963 (*id.* 34), had the following severe impairments: "Major  
9 Depressive Disorder, Recurrent, Moderate without psychotic features[;] Generalized Anxiety  
10 Disorder[;] second degree burns to both feet and ankles[;] low back lumbar radiculopathy and  
11 neck radiculopathy." (*Id.* 111.) ALJ Brown found that plaintiff's impairments precluded her from  
12 performing even sedentary activity on a sustained and reliable basis from September 8, 1998,  
13 plaintiff's alleged onset date of disability, through June 14, 2000. (*Id.* 113.) ALJ Brown also found  
14 that from June 15, 2000, through June 12, 2004, the date of ALJ Brown's decision, plaintiff's Major  
15 Depressive Disorder and Generalized Anxiety Disorder met the criteria of Medical Listings "12.04  
16 [Affective Disorder] and 12.06 [Anxiety Disorder,]" respectively. (*Id.*) Accordingly, ALJ Brown  
17 determined that plaintiff had been under a disability since September 8, 1998, her alleged onset  
18 date of disability, and was entitled to POD and DIB. (*Id.*)  
19

20 The Social Security Administration (the "SSA") re-evaluated<sup>2</sup> plaintiff's eligibility for benefits  
21 in 2010, and in a decision dated May 18, 2010, determined that plaintiff had medically improved  
22 as of May 1, 2010. (A.R. 12-25.) The SSA determined that plaintiff's benefits should cease on  
23 the last day of July 2010. (*Id.* 125.) Plaintiff requested reconsideration of the SSA's  
24

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25 <sup>2</sup> When a claimant has been granted benefits, the SSA "evaluate[s] her impairment(s)  
26 from time to time to determine if [she is] still eligible for disability cash benefits." 20 C.F.R. §  
27 404.1589. These recurring evaluations are called "continuing disability reviews." *Id.*; Flaten v.  
28 Sec'y of Health and Hum. Servs., 44 F.3d 1453, 1460 (9th Cir. 1995). Because a presumption of  
continuing disability arises once a claimant has been identified as disabled, the Commissioner has  
the burden of producing evidence to meet or rebut the presumption. See Bellamy v. Sec'y of  
Health and Human Servs., 755 F.2d 1380, 1381 (9th Cir. 1985).

1 determination. (*Id.* 129.) After a disability hearing by a Disability Hearing Officer, the SSA's  
2 "determination was upheld upon reconsideration." (*Id.* 23, 130-37.) Plaintiff appealed this  
3 determination. (*Id.* 23.)  
4

5 On June 15, 2011, plaintiff, who was represented by counsel, testified at a hearing before  
6 Administrative Law Helen E. Hesse (the "ALJ"). (A.R. 52, 59-64, 73-80.) Vocational expert Alan  
7 Boroskin ("VE") and two medical experts -- Dr. Samuel Landau, a physician, and Dr. Joseph  
8 Malancharuvil, a board-certified clinical psychologist -- also testified. (*Id.* 52, 55-59 (Dr. Landau's  
9 testimony), 64-73 (Dr. Malancharuvil's testimony), 80-83 (VE's testimony).)  
10

11 On August 4, 2011, the ALJ issued an unfavorable decision, finding, *inter alia*, that plaintiff  
12 had medically improved as of May 1, 2010, and as a result, her disability ended as of May 1, 2010.  
13 (A.R. 23-36.) The Appeals Council denied plaintiff's request for review of the ALJ's decision. (*Id.*  
14 1-6). That decision is now at issue in this action.  
15

### 16 **SUMMARY OF ADMINISTRATIVE DECISION**

17

18 In her August 4, 2011 decision, the ALJ found that, following ALJ Brown's 2004 decision  
19 awarding benefits, plaintiff had developed obesity but had otherwise continued to have the same  
20 severe impairments, namely "depressive disorder; anxiety disorder; lumber and cervical disorder;  
21 history of second-degree burns." (A.R. 25, 28.) However, the ALJ determined that, as of May 1,  
22 2010, plaintiff's impairments no longer met or equaled one of the listed impairments in 20 C.F.R.  
23 Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526). (*Id.* 26.)  
24 Specifically, the ALJ found that, as of May 1, 2010, the severity of plaintiff's impairments had  
25 decreased to such an extent that they neither met the criteria of Medical Listings 12.04 and 12.06  
26 nor precluded plaintiff from performing sedentary activity on a sustained and reliable basis. (*Id.*  
27 27.)

28 After reviewing the record, the ALJ also determined that, as of May 1, 2010, plaintiff had

1 the residual functional capacity ("RFC") to perform "less than light work as defined in 20 CFR [§]  
2 404.1567(b)." (A.R. 28.) Specifically, the ALJ determined that plaintiff is limited as follows:

3  
4 [can] lift/carry 10 pounds frequently and 20 pounds occasionally; stand/walk for six  
5 hours of an eight hour day; sit for six hours of an eight [h]our day; climb stairs,  
6 stoop, and bend occasionally; and [is] precluded from operating fast moving or  
7 hazardous machinery; [is] restricted from highly high [sic] pace work such as rapid  
8 assembly; and [is] precluded from safety related operations; limited to moderately  
9 complex tasks, up to 4 to 5 step instructions in [an] object-oriented setting.

10  
11 (*Id.*)

12  
13 Ultimately, the ALJ found that, as of May 1, 2010, plaintiff was able to perform her past  
14 relevant work as a housekeeper, DOT 323.687-014, and a janitor, DOT 381.687-014, as she  
15 actually performed it. (A.R. 34.) In addition, the ALJ determined that, as of May 1, 2010,  
16 plaintiff could perform jobs that exist in significant numbers in the national economy, namely  
17 inspector of wares, DOT 727.687, and street cleaner, DOT 955.687-018. (*Id.* 35.) Accordingly,  
18 the ALJ concluded that "[plaintiff]'s disability ended as of May 1, 2010." (*Id.*)

19  
20 **STANDARD OF REVIEW**

21  
22 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine  
23 whether it is free from legal error and supported by substantial evidence in the record as a whole.  
24 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). "Substantial evidence is 'more than a mere  
25 scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might  
26 accept as adequate to support a conclusion.'" *Gutierrez v. Comm'r of Soc. Sec.*, 740 F.3d 519,  
27 522-23 (9th Cir. 2014) (internal citations omitted). "Even when the evidence is susceptible to  
28 more than one rational interpretation, we must uphold the ALJ's findings if they are supported by

1 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir.  
2 2012).

3  
4 Although this Court cannot substitute its discretion for that of the Commissioner, the Court  
5 nonetheless must review the record as a whole, “weighing both the evidence that supports and  
6 the evidence that detracts from the [Commissioner’s] conclusion.” *Lingenfelter v. Astrue*, 504  
7 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation omitted); *Desrosiers v.*  
8 *Sec’y of Health and Hum. Servs.*, 846 F.2d 573, 576 (9th Cir. 1988). “The ALJ is responsible for  
9 determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities.”  
10 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

11  
12 The Court will uphold the Commissioner’s decision when the evidence is susceptible to  
13 more than one rational interpretation. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).  
14 However, the Court may review only the reasons stated by the ALJ in his decision “and may not  
15 affirm the ALJ on a ground upon which he did not rely.” *Orn*, 495 F.3d at 630; *see also* *Connett*  
16 *v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). The Court will not reverse the Commissioner’s  
17 decision if it is based on harmless error, which exists only when it is “clear from the record that  
18 an ALJ’s error was ‘inconsequential to the ultimate nondisability determination.’” *Robbins v. Soc.*  
19 *Sec. Admin.*, 466 F.3d 880, 885 (9th Cir. 2006) (quoting *Stout v. Comm’r of Soc. Sec.*, 454 F.3d  
20 1050, 1055 (9th Cir. 2006)); *see also* *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1162 (9th  
21 Cir. 2008).

## 22 23 **DISCUSSION**

24  
25 Plaintiff claims that the ALJ erred in failing to: (1) properly consider the opinions of  
26 examining physicians Dr. Grogan and Dr. Curtis; (2) overcome the presumption of plaintiff’s  
27 continued disability; (3) properly consider her subjective complaints; (4) properly consider the  
28 combined effects of her impairments in determining her RFC; and (5) pose a complete

1 hypothetical to the VE. (Joint Stipulation ("Joint Stip.") at 3.)  
2

3 **I. The ALJ Gave Specific And Legitimate Reasons For Rejecting The**  
4 **Opinions Of Examining Physicians Dr. Curtis And Dr. Grogan.**

5  
6 **A. Legal Standard**  
7

8 In disability benefits cases, physicians may render medical opinions or provide opinions on  
9 the ultimate issue, namely the claimant's ability to perform work. Garrison v. Colvin, 759 F.3d  
10 995, 1012 (9th Cir. 2014) (citing Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998)). It is the  
11 responsibility of the ALJ to resolve conflicts in medical testimony and analyze evidence.  
12 Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). As a general rule, however, the opinion  
13 of a treating physician is entitled to greater weight than that of an examining physician, the  
14 opinion of an examining physician is entitled to greater weight than that of a non-examining  
15 physician, and the weight afforded a non-examining physician's testimony depends on the degree  
16 to which he provided supporting explanations for his opinions. Garrison, 759 F.3d at 1012 (citing  
17 Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008); *see also* 20 C.F.R. §  
18 404.1527(c).  
19

20 When a treating or examining physician's opinion is not contradicted by another physician,  
21 it may be rejected only for "clear and convincing" reasons. Lester v. Chater, 81 F.3d 821, 830  
22 (9th Cir. 1995). When contradicted by another doctor, a treating or examining physician's opinion  
23 is still owed deference and may only be rejected if the ALJ provides "specific and legitimate"  
24 reasons supported by substantial evidence in the record. Garrison, 759 F.3d at 1012; Orn, 495  
25 F.3d at 632. An ALJ can satisfy the "substantial evidence" requirement by "setting out a detailed  
26 and thorough summary of the facts and conflicting clinical evidence, stating his interpretation  
27 thereof, and making findings." Garrison, 759 F.3d at 1012 (quoting Reddick, 157 F.3d at 725).  
28 "The ALJ must do more than state conclusions. He must set forth his own interpretations and

1 explain why they, rather than the doctors', are correct." *Id.*

2  
3 **B. The ALJ Did Not Err In Discounting Dr. Curtis' Assessment Of**  
4 **Plaintiff's Mental Impairments And Limitations**

5  
6 On January 20, 2011, examining psychiatrist Thomas Curtis, M.D., completed a  
7 "Consultative Psychological Evaluation And Report With Psychological Test Results" based on a  
8 psychiatric evaluation he conducted of plaintiff on January 17, 2011. (A.R. 946-66.) In the  
9 report, Dr. Curtis detailed: his general observations; plaintiff's description of her symptoms and  
10 medical history; and plaintiff's description of her family, marital, social, academic, and occupational  
11 history. (*Id.* 946-53.) Dr. Curtis also performed a mental status examination of plaintiff,  
12 psychological testing, and a review of plaintiff's medical records. (*Id.* 954-60.) He diagnosed  
13 plaintiff with "depressive disorder not otherwise specified with anxiety, post-traumatic reaction,  
14 panic attacks and psychotic features with voices and mental confusion (also possible somatic  
15 delusions" and "psychological factors affecting medication condition." (*Id.* 960.) Dr. Curtis also  
16 assessed plaintiff with a GAF score of 41.<sup>3</sup> (*Id.* 961.) He opined that plaintiff would have  
17 moderate impairment in her ability to: understand and remember very short simple instructions;  
18 carry out very short and simple instructions; ask simple questions or request assistance; and be  
19 aware of normal hazards and take appropriate precautions. (*Id.* 963-65.) Dr. Curtis found that  
20 plaintiff was markedly limited in all other areas of understanding and memory, sustained  
21 concentration and persistence, social interaction, and adaptation. (*Id.*) Finally, Dr. Curtis opined  
22 that plaintiff's impairments and limitations have "lasted and are expected to last for a continuous  
23 period of time into the permanent future." (*Id.* 965.) The ALJ gave "little weight" to Dr. Curtis'

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25 <sup>3</sup> A GAF score is the clinician's judgment of the individual's overall level of functioning.  
26 It is rated with respect only to psychological, social, and occupational functioning, without regard  
27 to impairments in functioning due to physical or environmental limitations. DIAGNOSTIC AND  
28 STATISTICAL MANUAL OF MENTAL DISORDERS, at 32 (4th Ed. 2000). A GAF rating of 41-50  
reflects "[s]erious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent  
shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no  
friends, unable to keep a job)." *Id.* at 34.

1 opinion, because it was: contradicted by the testimony of Dr. Malancharuvil;<sup>4</sup> inconsistent with  
2 the medical evidence of record; inconsistent with plaintiff's daily activities; and relied heavily on  
3 plaintiff's subjective complaints. (A.R. 32.) Because Dr. Curtis' opinion was contradicted by Dr.  
4 Malancharuvil's assessment, the ALJ was only required to articulate specific and legitimate for  
5 rejecting it. See Garrison, 759 F.3d at 1012. As explained below, the ALJ satisfied this standard.

### 7 **1. Plaintiff's Lack Of Treatment**

8  
9 An ALJ may discredit treating physicians' opinions that are unsupported by the record as  
10 a whole or by objective medical findings. Batson v. Comm'r, Soc. Sec. Admin., 359 F.3d 1190,  
11 1195 (9th Cir. 2004). Here, plaintiff submitted no medical records for the period between 2004  
12 and 2008, and she does not dispute that she received no medical treatment during that time.  
13 (A.R. 26; see also *id.* 282-83, 300-02.) Further, as noted by the ALJ, there is no evidence that  
14 plaintiff received "active treatment," such as therapy sessions, counseling, or hospitalizations, for  
15 her mental conditions after her favorable disability determination in 2004. (A.R. 27, 29.) The  
16 treatment notes that plaintiff submitted for the period between 2008 and 2010 indicate that  
17 plaintiff's "mood and affect were normal during numerous office visits." (*Id.* 29, 501, 507, 565,  
18 569, 573, 577, 579.) Those treatment notes also show that plaintiff only received routine or  
19 minimal care for her physical health (*i.e.*, rash, nasal congestion, sore throat, urinary tract  
20 infection, sinusitis) during that time period. (See *generally, id.* 494-526, 561-80.) Plaintiff's  
21 failure to seek treatment during that time for her mental health issues is inconsistent with, and  
22 seriously undermines, the extreme mental limitations assessed by Dr. Curtis and, thus, constitutes  
23 a specific and legitimate reason to reject Dr. Curtis' opinion.

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25  
26 <sup>4</sup> Dr. Malancharuvil testified that plaintiff's "mental impairments have improved  
27 because she no longer equaled or met listing 12.04 or 12.06" and that plaintiff "is limited to  
28 moderately complex tasks of up to four or five steps instructions in an object-oriented setting; and  
precluded from fast/hazardous machinery, fast pace work such as rapid assembly, and safety  
related operations." (A.R. 27 (ALJ's discussion of Dr. Malancharuvil's testimony); see also *id.* 64-  
73.)





1 then reviewed plaintiff's medical records but identified no records showing that plaintiff  
2 complained of, or received treatment -- besides medication -- for depression or anxiety after the  
3 Commissioner's last favorable decision. (*Id.* 960.) Accordingly, Dr. Curtis could not have based  
4 his conclusion that plaintiff has extreme mental limitations on his review of her medical records.  
5

6 Dr. Curtis did perform a series of psychological tests on plaintiff, but the ALJ found that  
7 these tests were "mostly self-rating," and therefore, their results were "within the control of the  
8 [plaintiff]." (A.R. 32); *see also* Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001) (ALJ  
9 was free to disregard an examining physician's opinion that was based "only on [the plaintiff's]  
10 subjective complaints and on testing within [the plaintiff's] control"). In reaching this conclusion,  
11 the ALJ relied on Dr. Malancharuvil's testimony that the Beck depression inventories administered  
12 by Dr. Curtis were an inappropriate tool for a disability evaluation, because they are "totally under  
13 the control of the person who rates it." (A.R. 67-68.) The ALJ also relied on Dr. Malancharuvil's  
14 testimony that plaintiff's performance on the MMPI (Minnesota Multiphasic Personality Inventory  
15 2) was a better indicator of plaintiff's mental health, because unlike the Beck depression  
16 inventories, the MMPI could not be easily manipulated. (*See* A.R. 30.) Significantly, plaintiff  
17 received an invalid score on the MMPI, which suggested she was overstating the severity of her  
18 symptoms. (*See* A.R. 30 (plaintiff's score on the MMPI was indicative of malingering); *id.* 70 (Dr.  
19 Malancharuvil's testimony that, if plaintiff's MMPI test results were to be believed, she was  
20 "completely out of her mind"); *id.* 957 (Dr. Curtis' statement that one possible explanation for  
21 plaintiff's score on the MMPI is "purposeful manipulation for secondary gain (malingering)").  
22

23 Because Dr. Malancharuvil's interpretation of the results of Dr. Curtis' tests was supported  
24 by independent evidence in the record -- namely, plaintiff's statements regarding her social  
25 interactions and activities of daily living and her failure to obtain treatment other than medication  
26 after the Commissioner's last favorable decision -- the ALJ was entitled to credit Dr.  
27 Malancharuvil's interpretation of the results of Dr. Curtis' test results. *See* Tonapetyan, 242 F.3d  
28 at 1149 ("Although the contrary opinion of a non-examining medical expert does not alone

1 constitute a specific, legitimate reason for rejecting a treating or examining physician's opinion,  
2 it may constitute substantial evidence when it is consistent with other independent evidence in  
3 the record.") Thus, the ALJ did not err in rejecting Dr. Curtis' assessment of plaintiff's mental  
4 limitations on the grounds that it was based on plaintiff's subjective complaints and on clinical  
5 findings that were susceptible to manipulation.

6  
7 For these reasons, the ALJ's decision to discount Dr. Curtis' opinion was proper.

8  
9 **C. The ALJ Did Not Err In Discounting Dr. Grogan's Assessment Of**  
10 **Plaintiff's Physical Impairments And Limitations**

11  
12 Plaintiff also contests the ALJ's decision not to accord significant weight to the opinion of  
13 examining physician Thomas J. Grogan, an orthopedic surgeon. The ALJ reasoned that Dr.  
14 Grogan's opinion was not entitled to great weight, because it was contradicted by the opinion of  
15 consulting physician Dr. Landau<sup>5</sup> and was: (1) inconsistent with plaintiff's lack of treatment; (2)  
16 conclusory; (3) inconsistent with plaintiff's reported daily activities; and (4) relied heavily on  
17 plaintiff's subjective complaints. (A.R. 32.)

18  
19 On June 2, 2010, examining physician Dr. Grogan completed a "Physical Examination  
20 Report." (A.R. 554-55.) In his report, he noted that, based *inter alia* on a physical examination  
21 of plaintiff and x-rays, plaintiff suffered from: degenerative disc disease, cervical and lumbar;  
22 history of bilateral foot causalgia status post burn with skin grafting; history of chronic headaches;  
23 history of atherosclerotic cardiovascular disease with hypercholesterolemia; and history of  
24 depression and anxiety. (*Id.* 555.) Dr. Grogan opined that plaintiff was "physically incapable of

25 \_\_\_\_\_  
26 <sup>5</sup> Dr. Landau testified that "based on her physical impairments, the claimant now has  
27 the residual functional capacity to perform less than a full range of light work. Specifically . . . the  
28 claimant is able to lift/carry 10 pounds frequently and 20 pounds occasionally; stand/walk for six  
hours of an eight hour day; sit for six hours of an eight [h]our day; stoop and bend occasionally;  
and precluded from balancing, climbing ladders, and working at heights." (A.R. 27-28 (the ALJ's  
discussion of Dr. Landau's testimony); *see also id.* 52, 55-59).)

1 returning to [work as a housekeeper] and should be permanently precluded from that type of  
2 employment in the future.” (*Id.*)

3  
4 Dr. Grogan also completed a “Physical Capacities Evaluation” that same day. (A.R. 559.)  
5 In that evaluation, he opined that plaintiff could sit for three consecutive hours, stand for two  
6 consecutive hours, and walk for one hour. (*Id.*) In an entire eight hour day, plaintiff could sit for  
7 a total of five hours, stand for a total of four hours, and walk for a total of three hours. (*Id.*)  
8 Plaintiff could occasionally lift and carry up to five pounds. (*Id.*) She could do simple grasping  
9 and fine manipulation, but no pushing and/or pulling. (*Id.*) Plaintiff could not, however, perform  
10 repetitive movements as in pushing and pulling of leg controls. (*Id.*) Dr. Grogan also opined that  
11 plaintiff could occasionally bend and reach, but could not squat, crawl, and climb. (*Id.*) According  
12 to Dr. Grogan, plaintiff was also moderately restricted from activities involving unprotected  
13 heights, being around moving machinery, and driving automotive equipments, and she was mildly  
14 limited in exposure to marked changes in temperature and humidity and exposure to dust, fumes,  
15 and gases. (*Id.*)

### 16 17 **1. Plaintiff’s Lack Of Treatment**

18  
19 The ALJ first rejected Dr. Grogan’s limitations regarding plaintiff’s physical impairments,  
20 because “[o]ther than records of [plaintiff] taking Ibuprofen for pain, [plaintiff’s] treating records  
21 on file, which only date back to 2008, do not indicate any complaints of or treatment for her  
22 severe impairments.” (A.R. 27, 31, 494-526, 561-80.) Further, the record indicates that, since  
23 2008, plaintiff’s “Active Problem List” has been limited to anxiety, depression, sinusitis, TMJ  
24 disorder, GERD, gastritis, eczema, prediabetes, obesity, and a urinary tract infection. (*Id.* 27, 31,  
25 500, 506, 564, 568, 570.) As for the second-degree burns on plaintiff’s feet and ankles, the ALJ  
26 observed that there is no record that plaintiff received treatment for these injuries after the last  
27 favorable disability determination. (*Id.* 30.) To the contrary, plaintiff stated that she had  
28 *recovered* from the skin grafting. (*Id.* 30; *see also id.* 953 (plaintiff told Dr. Curtis that she

1 recovered from the skin grafting procedures.) In sum, Dr. Grogan's physical limitations were  
2 inconsistent with plaintiff's treating notes, and this was a specific and legitimate reason to reject  
3 his opinion.

## 4 5 **2. Dr. Grogan's Opinion Is Conclusory**

6  
7 The ALJ's second reason for rejecting Dr. Grogan's opinion -- to *wit*, that his opinion is  
8 "quite conclusory, providing very little explanation of the evidence relied on in forming that  
9 opinion" -- is also legitimate. (A.R. 32); *see also* Bray v. Comm'r of Soc. Sec., 554 F.3d 1219,  
10 1228 (9th Cir. 2009) ("ALJ need not accept the opinion of any physician, including a treating  
11 physician, if that opinion is brief, conclusory, and inadequately supported by clinical findings.");  
12 Connett, 340 F.3d at 875 ("ALJ properly found that [the physician's] extensive conclusions  
13 regarding [the claimant's] limitations are not supported by his own treatment notes. Nowhere do  
14 his notes indicate reasons why [the physician would limit the claimant to a particular level of  
15 exertion]."). Here, Dr. Grogan performed a physical examination of plaintiff and lumbar and  
16 cervical spine x-rays. (A.R. 554-58.) However, he articulated limitations that conflicted with his  
17 general observations of plaintiff's strength and range of motion, and he provided no rationale for  
18 doing so. Specifically, Dr. Grogan found that: plaintiff had a full range of motion in her shoulders,  
19 elbows, wrists, and hands; she scored a 5/5 on the motor examination for all groups tested;  
20 plaintiff's sensation was intact to touch; and plaintiff's grip strength was 15/15 on the right side  
21 and 15/10 on the left. (A.R. 554.) Dr. Grogan nevertheless opined that plaintiff could: only  
22 occasionally lift and carry up to five pounds; occasionally reach; and could not do any pushing and  
23 pulling. (*Id.*) Similarly, Dr. Grogan found, *inter alia*, that plaintiff's gait was "normal to heel and  
24 toe without a crutch, cane, or orthoses[;]" plaintiff had a full range of motion in her hips, knees,  
25 ankles, and subtalar joints; and motor examination in plaintiff's lower extremities was rated at 5/5  
26 in all groups tested. (*Id.* 554-45.) Again, however, Dr. Grogan seemed to overstate plaintiff's  
27 limitations in the Physical Capacities Evaluation, restricting her to no repetitive movements (such  
28 as pushing and pulling leg controls) and no squatting, crawling, or climbing. (*Id.* 559.) Because

1 Dr. Grogan offered no rationale for his assessment of plaintiff's limitations and none was apparent  
2 from his observations of plaintiff's strength and abilities, the ALJ did not err by discounting Dr.  
3 Grogan's opinion on the grounds that it was conclusory.

### 4 5 **3. Plaintiff's Activities Of Daily Living**

6  
7 The ALJ's third reason for rejecting Dr. Grogan's opinion -- to *wit*, because his opinion was  
8 inconsistent with plaintiff's activities of daily living -- is also specific and legitimate. (A.R. 31); see  
9 *also* Morgan, 169 F.3d at 601-02 (ALJ permissibly rejected treating physician's opinion in part  
10 because it was inconsistent with plaintiff's daily activities); Rollins v. Massanari, 261 F.3d 853, 856  
11 (9th Cir. 2001) (inconsistency between treating physician's assessment of plaintiff's functional  
12 limitations and plaintiff's level of activity was an adequate reason for disregarding the treating  
13 physician's opinion). In November 2009, plaintiff reported that her typical day consists of: taking  
14 her son to school and picking him up from school, doing chores, and occasionally going to church.  
15 (*Id.* 353.) In April 2010, plaintiff reported that she is able to dress and bathe herself, run errands,  
16 shop, and manage money. (*Id.* 533, 535.) Plaintiff's son also reported that "she goes to church  
17 on her own" and occasionally "drives the car to the market," though she is not allowed to drive  
18 alone. (*Id.* 946.) Thus, the ALJ was entitled to reject Dr. Grogan's opinion to the extent they  
19 imposed highly restrictive functional limitations that were inconsistent with plaintiff's daily  
20 activities. See Morgan, 169 F.3d at 601-02; Rollins, 261 F.3d at 86 see *also* Batson, 359 F.3d at  
21 1193 (when evidence supports more than one rational interpretation, courts defer to the  
22 Commissioner's decision). Further, to the extent that the ALJ may have erred in citing plaintiff's  
23 daily activities as a reason for discrediting Dr. Grogan's opinion, the error was harmless, because  
24 the ALJ presented other specific and legitimate reasons for her credibility determination. *Cf.*  
25 Carmickle, 533 F.3d at 1162-63.

1                                   **4.     Dr. Grogan’s Reliance On Plaintiff’s Subjective Complaints**

2  
3           Finally, the ALJ rejected Dr. Grogan’s opinion, because he “apparently relied quite heavily  
4 on the subjective report of symptoms and limitations provided by [plaintiff].” (A.R. 32.)  
5 However, it appears that Dr. Grogan did not consider plaintiff’s subjective complaints as a basis  
6 for his opinion. (*Id.* 554-60.) Nonetheless, as stated above, the ALJ provided other specific and  
7 legitimate reasons for rejecting Dr. Grogan’s opinion, and, therefore, her error in finding that Dr.  
8 Grogan’s opinion was based primarily on plaintiff’s subjective complaints was harmless and did  
9 not affect the ultimate disability determination. *Cf.* Carmickle, 533 F.3d at 1162-63.

10  
11           Thus, the Court finds that the ALJ gave legally sufficient reasons for rejecting the opinions  
12 of both Dr. Curtis and Dr. Grogan.

13  
14                                   **II.     The ALJ's Finding That Plaintiff's Mental Impairments Have Medically**  
15                                   **Improved Is Supported By Substantial Evidence.**<sup>6</sup>

16  
17           “Once a claimant has been found to be disabled, . . . a presumption of continuing disability  
18 arises in [her] favor[, and the Commissioner] bears the burden of producing evidence sufficient  
19 to rebut the presumption of continuing disability.” See Bellamy v. Sec’y of Health and Hum Servs.,  
20 755 F.2d 1380, 1381 (9th Cir. 1985). Benefits cannot be terminated unless substantial evidence  
21 demonstrates medical improvement in the claimant’s impairment such that the claimant becomes  
22 able to engage in substantial gainful activity. See 42 U.S.C. § 423(f); 20 C.F.R. § 404.1594;  
23 Murray v. Heckler, 722 F.2d 499, 500 (9th Cir. 1983).

24  
25           Medical improvement is defined as “any decrease in the medical severity of [a claimant’s]

26  
27                                   \_\_\_\_\_  
28                                   <sup>6</sup> Plaintiff does not argue in this claim that the ALJ erred in finding that her physical  
impairments had medically improved. (See Joint Stip. at 22- 25.) Thus, the Court does not  
address the issue.

1 impairment(s) which was present at the time of the most recent favorable decision that [the  
2 claimant was] disabled or continued to be disabled.” 20 C.F.R. § 404.1594(c)(1). To determine  
3 whether there has been medical improvement, the claimant’s current condition must be compared  
4 with the claimant’s condition at the time of the most recent favorable determination or decision.  
5 20 C.F.R. § 404.1594(c)(2). The most recent favorable determination or decision is the latest final  
6 determination or decision involving a consideration of the medical evidence and whether the  
7 claimant was disabled or continued to be disabled. 20 C.F.R. § 404.1594(b)(7).

8  
9 In assessing whether plaintiff’s condition medically improved, the ALJ compared plaintiff’s  
10 medical condition on June 12, 2004, the date of the Commissioner’s most recent favorable  
11 decision, to plaintiff’s medical condition at the time of her decision, August 4, 2011. After carefully  
12 reviewing the record as a whole, the Court concludes that the ALJ’s finding of medical  
13 improvement in plaintiff’s mental condition is supported by substantial evidence.

14  
15 As noted above, by decision dated June 12, 2004, ALJ Brown determined that plaintiff’s  
16 impairments precluded the performance of even sedentary activity on a sustained and reliable  
17 basis from September 8, 1998 to June 14, 2000 and met the criteria of Medical Listings 12.04 and  
18 12.06 from June 14, 2000 through the date of his decision. (A.R. 113.) In finding that plaintiff’s  
19 condition had improved since ALJ Brown’s decision, the ALJ relied on: (1) the lack of treatment  
20 records demonstrating any objective findings or diagnostics regarding her alleged impairments  
21 after ALJ Brown’s decision and (2) the opinions of medical experts Dr. Malancharuvil and Dr.  
22 Landau. (*Id.* 27-28.)

23  
24 Plaintiff argues that the ALJ erred in finding that she had medically improved, because  
25 there were objective findings or diagnostics that demonstrated that she continued to suffer from  
26 her mental impairments after the Commissioner’s last favorable decision. (Joint Stip. at 22-25.)  
27 In support of her argument, plaintiff relies primarily on Dr. Curtis’ opinion. (*Id.*) However, as  
28 discussed above, the ALJ properly rejected the opinion of Dr. Curtis. Plaintiff also cites: a 2009



1 treatment note indicating that her depression and anxiety were active problems; consultative  
2 psychiatrist Dr. Bagner's diagnosis of depressive disorder; and Dr. Bagner's observation that  
3 plaintiff's mood and affect were congruent with her reported depression. (Joint Stip. at 22, 30.)  
4 However, contrary to plaintiff's argument, "the mere existence of an impairment is insufficient  
5 proof of a disability." Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir. 1993); *see also* 20 C.F.R.  
6 § 416.920(f), (g) (claimant's impairment(s) must prevent her from doing her past relevant work  
7 and from making an adjustment to any other work).

8  
9 Furthermore, the ALJ's determination that plaintiff had achieved medical improvement as  
10 of May 1, 2010, is supported by substantial evidence. First, the ALJ correctly observed that  
11 plaintiff's "treatment records fail to show any objective findings or diagnostics regarding her  
12 mental impairments after the CPD." (A.R. 27.) Indeed, the "only significant medical evidence  
13 [plaintiff] submitted regarding her mental condition after 2004 was [the] consultative report  
14 [completed] by Dr. Curtis," whose opinion the ALJ properly rejected. (*Id.* 27, 30, 494-526, 561-  
15 80.) Moreover, "other than some medication, [] there is no evidence of other treatment such as  
16 therapy sessions, counseling, and hospitalizations." (*Id.* 27.) Rather, the treatment notes  
17 submitted by plaintiff reveal that plaintiff's "mood and affect were normal during numerous office  
18 visits." (*See e.g.* 501, 507, 565, 569, 573, 577, 579.) The ALJ was entitled to rely on the lack  
19 of treatment and treating notes regarding plaintiff's impairments in finding that she had medically  
20 improved after the Commissioner's last favorable decision. *See Flaten v. Sec'y of Health and Hum.*  
21 *Servs.*, 44 F.3d 1453, 1464 (9th Cir. 1995) (holding that the ALJ did not err in rejecting the  
22 claimant's continuing disability claim based, in part, on a lack of medical care during the relevant  
23 period).

24  
25 In addition, the ALJ properly cited Dr. Malancharuvil's opinion that plaintiff had improved  
26 after the Commissioner's last favorable decision. (A.R. 27-28, 69.) Specifically, Dr. Malancharuvil  
27 testified that although plaintiff suffered from "depressive disorder," "psychological reactions to  
28 physical sensations, including pain," and "anxiety disorder," she did not meet or equal the

1 requirements of any listing and had "made improvements since the original decision." (*Id.* 69.)  
2 Dr. Malancharuvil based his opinion that plaintiff had medically improved on the lack of significant  
3 psychiatric treatment in plaintiff's medical records and on a report by examining physician, Ernest  
4 A. Bagner III, a board eligible psychiatrist.<sup>7</sup> (*Id.* 66-69.) Dr. Malancharuvil also took into account  
5 Dr. Curtis' report but, as explained above, found that Dr. Curtis' report was "significantly  
6 problematic" and "extremely biased," because it was based on plaintiff's self-reporting and on  
7 testing that was susceptible to manipulation by plaintiff and was inconsistent with the independent  
8 evidence in the record. (*Id.* 67-69.) Thus, the ALJ did not err by finding medical improvement  
9 partly on the basis of Dr. Malancharuvil's opinion, because Dr. Malancharuvil's opinion was  
10 supported by independent clinical findings and constituted substantial evidence of medical  
11 improvement. See Tonapetyan, 242 F.3d at 1149; Andrews, 53 F.3d at 1041 (when an ALJ rejects  
12 an examining physician's opinion in reliance on the testimony of a nonexamining advisor, the  
13 nonexaminer advisor's findings may be treated as substantial evidence when they are supported  
14 by, and consistent with, other evidence in the record).

15  
16 In sum, the ALJ's reasons for finding medical improvement were supported by substantial  
17 evidence in the record and warranted a finding of nondisability as of May 2010.

18  
19 **III. The ALJ Set Forth Clear And Convincing Reasons For Finding**  
20 **Plaintiff's Testimony Regarding Her Subjective Symptoms And Pain**  
21 **To Be Not Credible.**

22  
23 Plaintiff also argues that the ALJ erred in failing to credit her testimony regarding her  
24

---

25 <sup>7</sup> On April 28, 2010, psychiatrist Ernest A. Bagner III, M.D., conducted a complete  
26 psychiatric evaluation on plaintiff. (A.R. 532-35.) After eliciting information from plaintiff and  
27 conducting a mental status examination of plaintiff, Dr. Bagner diagnosed plaintiff with depressive  
28 disorder, not otherwise specified. (*Id.* 534.) He then opined that plaintiff would have "no  
limitations interacting with supervisors, peers and the public or completing simple tasks. (*Id.*  
535.) Plaintiff would have "mild limitations maintaining concentration and attention and  
completing tasks" and "mild to moderate limitations handling normal stresses at work and  
completing a normal work week without interruption." (*Id.*)

1 symptoms and pain. (Joint Stip. 30-37.) In evaluating the credibility of a claimant's testimony  
2 regarding subjective pain, an ALJ must engage in a two-step analysis. Vasquez v. Astrue, 572  
3 F.3d 586, 591 (9th Cir. 2009). "First, the ALJ must determine whether the claimant has presented  
4 objective medical evidence of an underlying impairment which could reasonably be expected to  
5 produce the pain or other symptoms alleged." *Id.* (quoting Lingenfelter, 504 F.3d at 1036  
6 (internal citations and quotation marks omitted)). The claimant is not required to show that her  
7 impairment "could reasonably be expected to cause the severity of the symptom she has alleged;  
8 she need only show that it could reasonably have caused some degree of the symptom."  
9 Vasquez, 572 F.3d at 591 (internal citation and quotation marks omitted). If the claimant meets  
10 the first test and there is no evidence of malingering, the ALJ can only reject the claimant's  
11 testimony about the severity of the symptoms if she gives "specific, clear and convincing reasons"  
12 for the rejection. *Id.* The factors to be considered in weighing a claimant's credibility include,  
13 *inter alia*: (1) the claimant's reputation for truthfulness; (2) inconsistencies in the claimant's  
14 testimony or between the claimant's testimony and her conduct; (3) the claimant's daily activities;  
15 and (4) the claimant's unexplained, or inadequately explained, failure to seek treatment. Orn, 495  
16 F.3d at 636.

17  
18 Here, the ALJ cited no evidence of malingering by plaintiff and concluded that "[plaintiff]'s  
19 medically determinable impairments could have reasonably be expected to produce the alleged  
20 symptoms." (A.R. 30.) Nevertheless, the ALJ determined that plaintiff's statements concerning  
21 the intensity, persistence, and limiting effects of her symptoms were not credible to the extent  
22 they were inconsistent with the ALJ's RFC assessment. (*Id.*) Because the ALJ found no evidence  
23 of malingering, the ALJ was required to articulate "clear and convincing" reasons for discounting  
24 plaintiff's subjective symptom testimony. As discussed below, the ALJ satisfied this standard.

25  
26 The ALJ's first reason for discounting plaintiff's subjective symptom testimony was that  
27 plaintiff's treatment and treatment notes were inconsistent with her assertion that she was totally  
28 disabled. Specifically, the ALJ observed that there were "no restrictions recommended by any

1 treating doctor” after the Commissioner’s last favorable decision and there was no evidence of  
2 “significant treatment for her severe impairments.” (A.R. 31.) The ALJ noted that treatment  
3 notes suggested plaintiff received “no active treatment for her depression, anxiety, and spine  
4 disorders [after] 2004, even though she received regular treatment for other conditions such as  
5 [a] urinary tract infection and asthma.” (*Id.* 31, 494-526, 561-80.) The ALJ also found no  
6 evidence that plaintiff had “taken any narcotic based pain relieving medications in spite of the  
7 allegations of quite limiting pain and there is no evidence of the use of any medications designed  
8 to treat psychiatric or mental symptoms.” (*Id.* 31, 494-526, 561-80.) The ALJ reasoned that,  
9 given plaintiff’s allegations of “totally disabling symptoms, one might expect to see some indication  
10 in the treatment records of restrictions placed on the [plaintiff] by the treating doctor” or that  
11 plaintiff would have done more to seek treatment. (*Id.* 31.) Plaintiff’s failure to seek treatment  
12 for allegedly disabling impairments was a clear and convincing reason for discounting her  
13 subjective symptom testimony. See Orn, 495 F.3d at 638 (“[I]f a claimant complains about  
14 disabling pain but fails to seek treatment . . . an ALJ may use such failure as a basis for finding  
15 the complaint unjustified or exaggerated. In the case of a complaint of pain, such failure may be  
16 probative of credibility[.]”); see also Burch, 400 F.3d at 681 (upholding ALJ’s discounting of  
17 claimant’s credibility due partly to the claimant’s lack of consistent treatment and characterizing  
18 the claimant’s lack of motivation to seek treatment as powerful evidence of the limited severity  
19 of her pain).

20  
21 The ALJ’s second reason for discounting plaintiff’s subjective symptom testimony was that  
22 she made inconsistent statements. For example, the ALJ noted that plaintiff testified in 2011 that  
23 she had been receiving psychotherapy for about two years, but in 2010, she told Dr. Bagner that  
24 she was not seeing a psychiatrist or counselor and had never received psychiatric treatment.  
25 (A.R. 31; see also *id.* 63-64 (plaintiff’s testimony), 532, 535 (plaintiff’s statements to Dr. Bagner).)  
26 The ALJ also observed that plaintiff’s testimony regarding her inability to “perform chores” --  
27 namely, cooking and laundry -- contradicted written evidence that she does chores every day.  
28 (A.R. 31; see also *id.* 75 (plaintiff’s testimony), 353 (plaintiff’s description of her daily activities);

1 438 (plaintiff's neighbor stated in 2002 that plaintiff did the laundry and the dishes.) Similarly,  
2 plaintiff reported that her "depression has caused her to become isolated and . . . to not want to  
3 care for her personal dress, etc." (A.R. 29, 304), but she told Dr. Bagner that she is able to "dress  
4 and bathe herself," "run errands and shop," and "manage money" and that she has "good"  
5 relationships with her family and friends. (*Id.* 533, 535.) Plaintiff's inconsistent statements were  
6 a clear and convincing reason for discrediting her testimony. See *Orn*, 495 F.3d at 636.

7  
8 The ALJ's third reason for discounting plaintiff's subjective symptom testimony was that  
9 plaintiff's activities of daily living were inconsistent with her allegation that she was totally  
10 disabled. (A.R. 30-31.) As stated above, an ALJ is allowed to consider a claimant's daily activities  
11 in assessing a claimant's credibility. *Orn*, 495 F.3d at 636; *Tommasetti v. Astrue*, 533 F.3d 1035,  
12 1041 (9th Cir. 2008). However, "[t]he mere fact that a plaintiff has carried on certain daily  
13 activities, such as grocery shopping, driving a car, or limited walking for exercise, does not in any  
14 way detract from her credibility as to her overall disability. One does not need to be 'utterly  
15 incapacitated' in order to be disabled." *Webb v. Barnhart*, 433 F.3d 683, 688 (9th Cir. 2005)  
16 (quoting *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001)). Here, the ALJ found that  
17 plaintiff's allegations of debilitating pain (*see, e.g.*, A.R. 76-78) were inconsistent with her  
18 statements that she takes her son to school and picks him up, does unspecified chores, goes to  
19 church, and occasionally drives. (A.R. 353, 533, 535, 946.) It is not clear, however, that this level  
20 of activity is inconsistent with plaintiff's claimed limitations, particularly given her statements that  
21 she rarely, if ever, drives alone, spends part of the morning lying down, and spends most of her  
22 day at home. See *Garrison*, 759 F.3d at 1016 (only if the claimant's level of activity were  
23 inconsistent with her claimed limitations would those activities have any bearing on her  
24 credibility); *see also id.* (claimant's ability to talk on the phone, prepare meals once or twice a day,  
25 occasionally clean one's room, and, with assistance, care for one's child, all the while taking hours-  
26 long rests is consistent with an inability to function in a workplace environment). Nevertheless,  
27 to the extent that the ALJ may have erred in discrediting plaintiff's subjective symptom testimony  
28 partly on the basis of her daily activities, the error is harmless, because the ALJ cited other clear

1 and convincing reasons for her credibility determination. See Carmickle, 533 F.3d at 1162-63.  
2 Thus, the ALJ did not err in rejecting that plaintiff's subjective symptom testimony.

3  
4 **IV. The ALJ Properly Determined Plaintiff's RFC.**

5  
6 Plaintiff also contends that the ALJ failed to take into account all of plaintiff's exertional and  
7 non-exertional severe limitations in determining her RFC. (Joint Stip. at 42-47.) Specifically,  
8 plaintiff contends that the ALJ erred by failing to take into account the "pain in her feet, pain in  
9 her lumbar spine, pain with range of motion in the cervical spine, limited range of motion in the  
10 lumbar spine," as well as her anxiety and depression, in determining her RFC. (*Id.* at 44.)

11  
12 An ALJ is required to consider all of the limitations imposed by a claimant's limitations, even  
13 those that are not severe. Carmickle, 533 F.3d at 1164. "Even though a non-severe 'impairment  
14 standing alone may not significantly limit an individual's ability to do basic work activities, it may --  
15 when considered with limitations or restrictions due to other impairments -- be critical to the  
16 outcome of a claim.'" *Id.* (quoting Social Security Ruling 96-8p (1996)). Where the ALJ has  
17 properly considered all of the limitations for which there is record support, however, the ALJ's RFC  
18 determination will not be overturned so long as the ALJ applied the correct legal standard and the  
19 RFC assessment is supported by substantial evidence. See Bayliss v. Barnhart, 427 F.3d 1211,  
20 1217 (9th Cir. 2005).

21  
22 Here, the ALJ found that plaintiff had the residual functional capacity to perform less than  
23 light work, limiting plaintiff to, *inter alia*: lifting or carrying no more than ten pounds frequently  
24 and twenty pounds occasionally; sitting, standing, or walking for no more than six hours a day;  
25 and performing only limited to moderately complex tasks with up to four to five step instructions  
26 in an object oriented setting. (A.R. 28.) The ALJ stated that she "considered all symptoms" in  
27 making this assessment of plaintiff's RFC. (*Id.*) Indeed, she discussed plaintiff's subjective  
28 description of her symptoms but, as explained above, found that plaintiff was not credible. (*Id.*

1 28-31.) The ALJ also considered Dr. Grogan's and Dr. Curtis' assessments of plaintiff's limitations  
2 but again, as discussed above, found that their assessments were not entitled to great weight,  
3 because they were contradicted by independent evidence in the record and by the opinions of  
4 medical experts Drs. Landau and Malancharuvil. (*Id.* 30-33.) The ALJ also considered and  
5 rejected the functional assessments of consulting physicians who found that plaintiff could  
6 perform "medium exertional work" and had "no severe mental impairments." (*Id.* 33.) Thus, the  
7 ALJ properly considered all of the evidence regarding plaintiff's limitations in determining her RFC  
8 and, as discussed extensively above, satisfied the applicable legal standards in declining to accord  
9 great weight to some of that evidence.

10  
11 The Court finds that the ALJ's RFC assessment was supported by substantial evidence.  
12 Specifically, the ALJ's RFC assessment was supported by the testimony of medical experts Dr.  
13 Malancharuvil and Dr. Landau. (A.R. 32-33.) Reports of a non-examining medical expert "may  
14 serve as substantial evidence when they are supported by other evidence in the record and are  
15 consistent with it." *Andrews*, 53 F.3d at 1041. In determining plaintiff's physical RFC, medical  
16 expert Dr. Landau based his assessment on plaintiff's medical records, including a "Complete  
17 Orthopedic Consultation" by orthopedic surgeon, Carlos Gonzalez, who considered plaintiff's back  
18 and feet impairments.<sup>8</sup> (A.R. 56-57, 527-31.) For his part, Dr. Malancharuvil relied on plaintiff's  
19 medical records, or lack thereof, as well as the opinion of consultative examiner Dr. Bagner, who  
20 considered plaintiff's depression and anxiety. (*Id.* 66-70.) Both Dr. Landau's and Dr.  
21 Malancharuvil's opinions were supported by plaintiff's failure to seek treatment, other than  
22 obtaining medication for her depression and anxiety and Ibuprofen for her pain, after the  
23

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24  
25 <sup>8</sup> On April 9, 2010, Dr. Gonzalez conducted a "Complete Orthopedic Consultation" of  
26 plaintiff. (A.R. 527-31.) Dr. Gonzalez noted that plaintiff complained of bilateral lower leg pain,  
27 back pain, and bilateral feet pain. (A.R. 527.) He then conducted an orthopedic and neurological  
28 examination, as well as diagnostic studies of plaintiff's lumbar spine, and he concluded that  
plaintiff's physical examination was within normal limits, and there was no evidence of neurologic  
deficit. (A.R. 530.) Thus, Dr. Gonzalez opined that plaintiff could perform medium level work with  
no standing, walking, and sitting limitations. (A.R. 530.) She could also bend, kneel, stoop, crawl,  
and crouch on a frequent basis. (*Id.*) Dr. Gonzalez opined that plaintiff can perform overhead  
activities and has full use of her hands for fine and gross manipulative movements. (*Id.*)

1 Commissioner's last favorable decision. In sum, Dr. Landau's and Dr. Malancharuvil's opinions  
2 were supported by independent evidence in the record and, therefore, constituted substantial  
3 evidence supporting the ALJ's assessment of plaintiff's RFC. For these reasons, the Court finds  
4 no error in the ALJ's determination of plaintiff's RFC.

5  
6 **V. The ALJ Posed A Complete Hypothetical Question To The Vocational**  
7 **Expert.**  
8

9 In her final argument, plaintiff contends that the ALJ failed to pose a proper hypothetical  
10 to the VE, because her hypothetical did not include the limitations assessed by Dr. Curtis and Dr.  
11 Grogan. (Joint Stip. at 50-52.) Hypothetical questions posed to the vocational expert must  
12 accurately describe "all the claimant's limitations, both physical and mental, supported by the  
13 record." See Hill v. Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012). If the ALJ's hypothetical  
14 question to the VE does not reflect all of the claimant's limitations, then the expert's testimony has  
15 no evidentiary value to support a finding that the claimant can perform jobs in the national  
16 economy. *Id.*; Matthews, 10 F.3d at 681.

17  
18 Here, the ALJ presented the VE with a hypothetical question about the vocational  
19 opportunities for someone meeting the following description:

20  
21 [A] 48-year-old individual with a high school education . . . who is literate and  
22 speaks at least basic English . . . [who's] not a citizen, but she's worked in the  
23 United States a number of years . . . This individual can sit for six hours out of an  
24 eight hour day, stand and walk six hours out of an eight hour day with normal  
25 workday breaks; occasionally lift twenty pounds, frequently lift ten pounds;  
26 occasionally climb stairs, bend, or stoop. She is precluded from climbing ladders,  
27 ropes, or scaffolding, from balancing, working at unprotected heights, around  
28 dangerous or fast-moving machinery. She's precluded from work -- high-production



1 quota or rapid assembly line work. She needs an object-oriented environment. She  
2 should not be in charge of safety operations of others. And she can perform  
3 moderately complex tasks, up to four or five steps.  
4

5 (A.R. 80-81.)  
6

7 This description is consistent with the ALJ's RFC determination. (*Compare id. with id. 28.*)  
8 Further, for the reasons stated above, the ALJ did not err by discounting Dr. Grogan and Dr.  
9 Curtis' assessments of plaintiff's functional limitations, and the ALJ was entitled to exclude from  
10 the hypothetical plaintiff's asserted limitations that were not supported by the record. See Hill,  
11 698 F.3d at 1161. Thus, the ALJ posited a complete hypothetical based on a proper RFC  
12 determination supported by substantial evidence of record. There was, therefore, no error.  
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1 **CONCLUSION**

2

3 For the foregoing reasons, the Court finds that the Commissioner’s decision is supported

4 by substantial evidence and is free from material legal error. Neither reversal of the

5 Commissioner’s decision nor remand is warranted.

6

7 Accordingly, IT IS ORDERED that Judgment shall be entered affirming the decision of the

8 Commissioner of the Social Security Administration. IT IS FURTHER ORDERED that the Clerk of

9 the Court shall serve copies of this Memorandum Opinion and Order and the Judgment on counsel

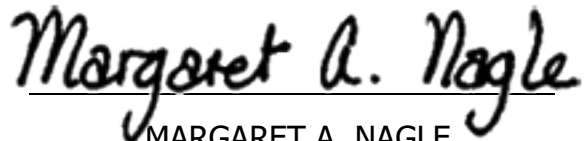
10 for plaintiff and for the Commissioner.

11

12 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

13

14 DATED: September 30, 2014

15 

16 MARGARET A. NAGLE

17 UNITED STATES MAGISTRATE JUDGE

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