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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARIA ESTHER GONZALES,)	Case No. CV 14-0078-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING THE COMMISSIONER
)	
COMMISSIONER OF SOCIAL)	
SECURITY ADMINISTRATION,)	
)	
Defendant.)	
)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner’s final decision denying her applications for Social Security disability insurance benefits (“DIB”) and supplemental security income benefits (“SSI”). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties’ Joint Stipulation, filed September 25, 2014, which the Court has taken under submission without oral argument. For the reasons discussed below, the Commissioner’s decision is affirmed and judgment is entered in her favor.

1 **II. BACKGROUND**

2 Plaintiff was born on June 25, 1955.¹ (Administrative
3 Record ("AR") 142, 150.) She completed the fourth grade and
4 worked as a janitor. (AR 42, 205.)

5 On December 9 and 16, 2010, respectively, Plaintiff filed
6 applications for DIB and SSI. (AR 23, 55-56, 142-59.) In a
7 disability report, she alleged that she had been unable to work
8 since October 1, 2008, because of her high blood pressure, heart
9 murmur, and high cholesterol. (AR 198-99.) In late 2011 she
10 further alleged that she had "leg problems" (AR 218) and
11 "osteoarthritis" (AR 228). After Plaintiff's applications were
12 denied initially and on reconsideration, she requested a hearing
13 before an Administrative Law Judge. (AR 72-73.)

14 A hearing was held on July 3, 2012. (AR 35-52.) Plaintiff,
15 who was represented by counsel, testified through an interpreter;
16 a vocational expert also testified. (*Id.*) In a written decision
17 issued August 31, 2012, the ALJ found Plaintiff not disabled.
18 (AR 23-31.) On September 26, 2012, Plaintiff requested Appeals
19 Council review. (AR 14.) On November 15, 2013, the council
20 denied the request. (AR 5-9.) This action followed.

21 **III. STANDARD OF REVIEW**

22 Under 42 U.S.C. § 405(g), a district court may review the
23 Commissioner's decision to deny benefits. The ALJ's findings and
24 decision should be upheld if they are free of legal error and
25

26
27 ¹ In her applications, Plaintiff listed her date of birth
28 as June 25, 1955 (*see* AR 142, 150), but her medical records show it
as August 25, 1955 (*see, e.g.*, AR 243-47, 271-80, 282-97), and she
testified at the hearing that it was August 25, 1955 (AR 40).

1 supported by substantial evidence based on the record as a whole.
2 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
3 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
4 evidence means such evidence as a reasonable person might accept
5 as adequate to support a conclusion. Richardson, 402 U.S. at
6 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
7 It is more than a scintilla but less than a preponderance.
8 Lingenfelter, 504 F.3d at 1035. To determine whether substantial
9 evidence supports a finding, the reviewing court "must review the
10 administrative record as a whole, weighing both the evidence that
11 supports and the evidence that detracts from the Commissioner's
12 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
13 1996). "If the evidence can reasonably support either affirming
14 or reversing," the reviewing court "may not substitute its
15 judgment" for that of the Commissioner. Id. at 720-21.

16 **IV. THE EVALUATION OF DISABILITY**

17 People are "disabled" for purposes of receiving Social
18 Security benefits if they are unable to engage in any substantial
19 gainful activity owing to a physical or mental impairment that is
20 expected to result in death or has lasted, or is expected to
21 last, for a continuous period of at least 12 months. 42 U.S.C.
22 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
23 1992).

24 A. The Five-Step Evaluation Process

25 The ALJ follows a five-step sequential evaluation process in
26 assessing whether a claimant is disabled. 20 C.F.R.
27 §§ 404.1520(a)(4), 416.920(a)(4); Lester v. Chater, 81 F.3d 821,
28 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996). In the first

1 step, the Commissioner must determine whether the claimant is
2 currently engaged in substantial gainful activity; if so, the
3 claimant is not disabled and the claim must be denied.

4 §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

5 If the claimant is not engaged in substantial gainful
6 activity, the second step requires the Commissioner to determine
7 whether the claimant has a "severe" impairment or combination of
8 impairments significantly limiting her ability to do basic work
9 activities; if not, a finding of not disabled is made and the
10 claim must be denied. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

11 If the claimant has a "severe" impairment or combination of
12 impairments, the third step requires the Commissioner to
13 determine whether the impairment or combination of impairments
14 meets or equals an impairment in the Listing of Impairments
15 ("Listing") set forth at 20 C.F.R., Part 404, Subpart P, Appendix
16 1; if so, disability is conclusively presumed and benefits are
17 awarded. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii).

18 If the claimant's impairment or combination of impairments
19 does not meet or equal an impairment in the Listing, the fourth
20 step requires the Commissioner to determine whether the claimant
21 has sufficient residual functional capacity ("RFC")² to perform
22 her past work; if so, the claimant is not disabled and the claim
23 must be denied. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). The
24 claimant has the burden of proving she is unable to perform past
25 relevant work. Drouin, 966 F.2d at 1257. If the claimant meets

26
27 ² RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. §§ 404.1545, 416.945; see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 that burden, a prima facie case of disability is established.

2 Id.

3 If that happens or if the claimant has no past relevant
4 work, the Commissioner then bears the burden of establishing that
5 the claimant is not disabled because she can perform other
6 substantial gainful work available in the national economy.

7 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). That determination
8 comprises the fifth and final step in the sequential analysis.

9 §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966
10 F.2d at 1257.

11 B. The ALJ's Application of the Five-Step Process

12 At step one, the ALJ found that Plaintiff had not engaged in
13 substantial gainful activity since October 1, 2008, her alleged
14 onset date. (AR 25.) At step two, she found that Plaintiff had
15 the severe impairment of "degenerative joint disease, left knee."

16 (Id.) She found that Plaintiff's obesity, heart murmur,
17 hypertension, osteoarthritis, varicose veins, and depression were
18 not severe (AR 25-26), findings Plaintiff does not challenge. At
19 step three, she determined that Plaintiff's impairments did not
20 meet or equal any of the impairments in the Listing. (AR 26.)

21 At step four, the ALJ found that Plaintiff had the RFC to perform
22 medium work as follows:

23 the claimant can lift and/or carry 50 pounds occasionally
24 and 25 pounds frequently; she can stand and/or walk for
25 six hours out of an eight-hour workday with regular
26 breaks; she can sit for six hours out of an eight-hour
27 workday with regular breaks; she is unlimited with
28 respect to pushing and/or pulling, other than as

1 indicated for lifting and/or carrying; she can frequently
2 kneel, stoop, crawl, and crouch; she can frequently climb
3 ramps and stairs; she can frequently climb ladders,
4 ropes, or scaffolds; she has no restrictions relating to
5 the bilateral hands for fine and gross manipulation; she
6 can respond and interact appropriately to coworkers,
7 supervisors, and the general public; she can sustain
8 concentration and attention, persistence and pace in at
9 least two hour blocks of time to complete a normal
10 workday; and the claimant can complete both complex and
11 detailed tasks.

12 (AR 26-27.) Based on the VE's testimony, the ALJ concluded that
13 Plaintiff was able to perform her past relevant work as a
14 janitor. (AR 30.) Accordingly, she found Plaintiff not
15 disabled. (Id.)

16 **V. DISCUSSION**

17 Plaintiff contends that the ALJ erred in (1) assessing the
18 opinion of her treating nurse practitioner, Renanda Stevenson,
19 (2) formulating her RFC, (3) assessing her credibility, and (4)
20 finding that her past relevant work was performed at the light-
21 exertion level.³ (J. Stip. at 2.)

22 A. The ALJ Did Not Err in Assessing Nurse Stevenson's
23 Opinion and Plaintiff's RFC

24 Plaintiff contends that the ALJ failed to properly consider
25 Nurse Stevenson's opinion (J. Stip. at 25) and that her RFC

27 ³ The Court addresses the disputed issues in an order
28 different from that followed by the parties, and it discusses the
first and second issues together in Section V.A.

1 should be "limited to sedentary work based upon [her] objectively
2 verified knee impairment" (id. at 3).

3 1. Applicable law

4 A district court must uphold an ALJ's RFC assessment when
5 the ALJ has applied the proper legal standard and substantial
6 evidence in the record as a whole supports the decision. Bayliss
7 v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005). The ALJ must
8 consider all the medical evidence in the record and "explain in
9 [her] decision the weight given to . . . [the] opinions from
10 treating sources, nontreating sources, and other nonexamining
11 sources." §§ 404.1527(e)(2)(ii), 416.927(e)(2)(ii); see also
12 §§ 404.1545(a)(1) ("We will assess your residual functional
13 capacity based on all the relevant evidence in your case
14 record."), 416.945(a)(1) (same); SSR 96-8p, 1996 WL 374184, at *2
15 (July 2, 1996) (RFC is assessed "based on all of the relevant
16 evidence in the case record"). In making an RFC determination,
17 the ALJ may consider those limitations for which there is support
18 in the record and need not consider properly rejected evidence or
19 subjective complaints. See Bayliss, 427 F.3d at 1217 (upholding
20 ALJ's RFC determination because "the ALJ took into account those
21 limitations for which there was record support that did not
22 depend on [claimant's] subjective complaints"); Batson v. Comm'r
23 of Soc. Sec. Admin., 359 F.3d 1190, 1197 (9th Cir. 2004) (ALJ not
24 required to incorporate into RFC any findings from treating-
25 physician opinions that were "permissibly discounted"). The
26 Court must consider the ALJ's decision in the context of "the
27 entire record as a whole," and if the "evidence is susceptible to
28 more than one rational interpretation, the ALJ's decision should

1 be upheld." Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198
2 (9th Cir. 2008) (internal quotation marks omitted).

3 2. Relevant background

4 On October 14, 2007, Plaintiff visited an emergency room,
5 complaining of right-leg pain since suffering an injury while
6 cleaning one week earlier. (AR 274, 276.) She was diagnosed
7 with a hamstring strain and prescribed Norco.⁴ (AR 275.)
8 Plaintiff was seen by clinicians on April 1 and October 2, 2008,
9 and November 25, 2009, but she did not complain of any knee or
10 leg pain at those appointments. (AR 291-93.) On April 27, 2010,
11 a clinician noted that Plaintiff "feel[s] ok"; she diagnosed
12 "stable" hypertension and refilled her medications. (AR 289.)

13 On November 12, 2010, Nurse Stevenson noted that Plaintiff
14 was "doing well" and had no complaints "at this time."⁵ (AR
15 288.) She diagnosed "new onset cardiac murmur," dyslipidemia,⁶
16 and hypertension and refilled Plaintiff's medications. (Id.)

17 On May 12, 2011, Dr. Concepcion A. Enriquez, who was board
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19 ⁴ Norco is a combination of hydrocodone, a narcotic
20 analgesic, and acetaminophen. Hydrocodone Combination Products,
21 MedlinePlus, [http://www.nlm.nih.gov/medlineplus/druginfo/meds/
22 a601006.html](http://www.nlm.nih.gov/medlineplus/druginfo/meds/a601006.html) (last revised Oct. 15, 2014). It is used to relieve
moderate to severe pain. (Id.)

23 ⁵ Nurse Stevenson wrote "no c/o at this time" (AR 288);
24 "c/o" is a medical abbreviation for "complains of," see Medical
25 Abbreviations, Taber's Online, [http://www.tabers.com/tabersonline/
view/Tabers-Dictionary/767492/0/Medical_Abbreviations](http://www.tabers.com/tabersonline/view/Tabers-Dictionary/767492/0/Medical_Abbreviations) (last
accessed Feb. 9, 2015).

26 ⁶ Dyslipidemia is a condition marked by abnormal
27 concentrations of lipids or lipoproteins in the blood.
28 Dyslipidemia Definition, Merriam-Webster.com, [http://
www.merriam-webster.com/medical/dyslipidemia](http://www.merriam-webster.com/medical/dyslipidemia) (last visited Feb. 9,
2015).

1 eligible in internal medicine, performed an internal-medicine
2 consultation at the Social Security Administration's request.
3 (AR 238-41.) Dr. Enriquez noted that Plaintiff complained of
4 high blood pressure, heart murmur, high cholesterol, abdominal
5 pain, and "a history of pain on both knees, (right is worse than
6 the left) for eight to nine years." (AR 238.) Upon examination,
7 Dr. Enriquez found that Plaintiff's knees had grossly normal
8 ranges of motion and no tenderness; her extremities had no
9 swelling, warmth, or crepitus; her motor strength was 5/5
10 throughout; and her sensation was intact. (AR 240-41.)
11 Plaintiff's gait and balance were normal, and she did not require
12 an assistive device. (AR 241.) Dr. Enriquez found that
13 Plaintiff had "no impairment-related physical limitations."
14 (Id.)

15 On June 1, 2011, Dr. Kenneth Glass, who specialized in
16 internal medicine,⁷ reviewed Dr. Enriquez's report and found that
17 Plaintiff's physical problems were not severe. (AR 242.)

18 On June 30, 2011, Plaintiff visited an emergency room,
19 complaining of left-knee and -leg pain. (AR 247, 255.)
20 Plaintiff claimed to have had left-leg pain for three years (AR
21 255), and a medical provider noted that she had "slight knee
22 swelling" (AR 249). Plaintiff was diagnosed with varicose veins
23 (AR 256), prescribed Norco (AR 251, 257), and discharged in
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25 ⁷ Dr. Glass's electronic signature includes a medical
26 specialty code of 19, indicating internal medicine. (AR 242); see
27 Program Operations Manual System (POMS) DI 26510.089, U.S. Soc.
28 Sec. Admin. (Oct. 25, 2011), <http://policy.ssa.gov/poms.nsf/lnx/0426510089>; POMS DI 26510.090, U.S. Soc. Sec. Admin. (Aug. 29, 2012), <http://policy.ssa.gov/poms.nsf/lnx/0426510090>.

1 stable condition (AR 256).

2 On July 7, 2011, Nurse Stevenson noted that Plaintiff had
3 just obtained medical insurance and needed a new cardiology
4 referral. (AR 287.) A cardiovascular examination revealed a
5 heart murmur, but neurological, musculoskeletal, and skin
6 examinations were normal. (Id.) Nurse Stevenson diagnosed
7 dyslipidemia, hypertension, and cardiac murmur and refilled
8 Plaintiff's medications. (Id.)

9 On July 21, 2011, Nurse Stevenson noted that Plaintiff
10 complained of leg pain for the past four years that had been
11 worsening that year. (AR 286.) Nurse Stevenson found that
12 Plaintiff's left knee was moderately to severely tender and
13 slightly swollen. (Id.) She ordered a left-knee x-ray,
14 prescribed Ultram,⁸ and recommended swimming for weight loss.
15 (Id.) On July 28, 2011, an x-ray of Plaintiff's left knee showed
16 osteoarthritis. (AR 243.)

17 On August 15, 2011, Nurse Stevenson discussed the x-ray
18 results with Plaintiff, diagnosed left-knee osteoarthritis, noted
19 that Plaintiff "admits Ultram [is] working well," and referred
20 her for an MRI. (AR 285.) That same day, Nurse Stevenson
21 completed a one-page check-off "Medical Assessment of Ability to
22 Do Work-Related Activities." (AR 259.) She opined that
23 Plaintiff could lift and carry up to 10 pounds, sit for eight
24 hours in an eight-hour day, and stand or walk for up to an hour
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26
27 ⁸ Ultram, or tramadol, is a narcotic analgesic used to
28 relieve moderate to moderately severe pain. Tramadol, MedlinePlus,
<http://www.nlm.nih.gov/medlineplus/druginfo/meds/a695011.html> (last updated Oct. 15, 2013).

1 at a time, and stand and walk for a total of two hours in an
2 eight-hour day. (Id.) Nurse Stevenson left blank the spaces on
3 the form for listing medical findings that supported her
4 assessment. (Id.)

5 On August 23, 2011, medical consultant Dr. V. Phillips, who
6 practiced general or family medicine,⁹ reviewed Dr. Enriquez's
7 and Nurse Stevenson's opinions and the June 2011 emergency-room
8 notes and opined that Plaintiff's impairments were not severe.
9 (AR 267.)

10 On March 1, 2012, Nurse Stevenson noted that Plaintiff was
11 complaining of "a lot of pain" in her left knee and wanted a
12 prescription for pain medication. (AR 283.) Nurse Stevenson
13 noted that Plaintiff had a "limping gait" and her left knee was
14 tender and swollen. (Id.) She prescribed tramadol and referred
15 Plaintiff for an MRI. (Id.) That same day, Nurse Stevenson
16 completed a second medical-assessment form, opining that
17 Plaintiff could lift up to 10 pounds, sit for two hours at a time
18 for a total of eight hours in an eight-hour day, and stand or
19 walk for a half hour at a time, for a total of two hours in an
20 eight-hour day. (AR 269.) Under one of the sections for listing
21 medical findings, Nurse Stevenson wrote "L[eft] knee
22 osteoarthritis, pain [and] swelling." (Id.)

23 On March 16, 2012, a left-knee MRI showed a complex tear of
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25 ⁹ Dr. Phillips's electronic signature includes a medical
26 specialty code of 12, indicating "family or general practice." (AR
27 267); see Program Operations Manual System (POMS) DI 26510.089,
28 U.S. Soc. Sec. Admin. (Oct. 25, 2011), <http://policy.ssa.gov/poms.nsf/lnx/0426510089>; POMS DI 26510.090, U.S. Soc. Sec. Admin. (Aug. 29, 2012), <http://policy.ssa.gov/poms.nsf/lnx/0426510090>.

1 the medial meniscus¹⁰ with "mild extrusion of the medial meniscal
2 body causing mild bowing of the medial collateral ligament
3 complex," mild osteoarthritis,¹¹ cystic change within the
4 anterior cruciate ligament with no evidence of a full-thickness
5 ACL tear, "a very small joint effusion," and a "small popliteal
6 cyst."¹² (AR 272.) On May 23, 2012, Nurse Stevenson discussed
7 the MRI results with Plaintiff; noted that neurological,
8 musculoskeletal, and skin examinations were normal; diagnosed
9 cardiac murmur, hypertension in poor control, dyslipidemia, and
10 left-knee pain due to osteoarthritis; and prescribed naprosyn and
11 Vicodin.¹³ (AR 282.)

12 On May 31, 2012, Physician Assistant Da Thao Neria at Corona
13 Temecula Orthopedic Associates noted that Plaintiff complained of
14 left-knee pain and swelling. (AR 295.) Neria found that

15
16 ¹⁰ The meniscus is a rubbery, C-shaped disc that cushions
17 the knee. Meniscus Tear, WebMD, [http://www.webmd.com/
18 a-to-z-guides/meniscus-tear-topic-overview](http://www.webmd.com/a-to-z-guides/meniscus-tear-topic-overview) (last updated Sept. 10,
19 2012).

20 ¹¹ Osteoarthritis is a synonym for osteoarthritis. See
21 Stedman's Medical Dictionary 1283 (27th ed. 2000).

22 ¹² A popliteal cyst is a fluid-filled cyst that causes a
23 bulge and feeling of tightness behind the knee. Baker's cyst, Mayo
24 Clinic, [http://www.mayoclinic.org/diseases-conditions/bakers-cyst/
25 basics/definition/con-20023332](http://www.mayoclinic.org/diseases-conditions/bakers-cyst/basics/definition/con-20023332) (last updated Aug. 1, 2012).

26 ¹³ Naprosyn, or naproxen, is a nonsteroidal anti-
27 inflammatory drug ("NSAID") used to relieve pain, tenderness,
28 swelling, and stiffness caused by osteoarthritis and other
conditions. Naproxen, MedlinePlus, [http://www.nlm.nih.gov/
medlineplus/druginfo/meds/a681029.html](http://www.nlm.nih.gov/medlineplus/druginfo/meds/a681029.html) (last revised July 15,
2014). Vicodin is a combination of hydrocodone, a narcotic
analgesic, and acetaminophen. Hydrocodone Combination Products,
MedlinePlus, [http://www.nlm.nih.gov/medlineplus/druginfo/meds/
a601006.html](http://www.nlm.nih.gov/medlineplus/druginfo/meds/a601006.html) (last revised Oct. 15, 2014). It is used to relieve
moderate to severe pain. (Id.)

1 Plaintiff had decreased range of motion, joint pain, and joint
2 swelling. (Id.) She noted that Plaintiff's x-rays indicated
3 "advanced degenerative changes," and her March 2012 MRI revealed
4 a medial-meniscus tear of the posterior horn. (AR 296.) She
5 diagnosed left-knee "severe" osteoarthritis, administered a
6 cortisone injection, prescribed diclofenac,¹⁴ and noted that
7 Plaintiff "[u]ltimately" "may require a total knee arthroplasty"¹⁵
8 in the future" and that they would "consider viscosupplement"¹⁶ at
9 the next visit if the cortisone fails to help." (Id.)

10 In her August 31, 2012 decision, the ALJ found that
11 Plaintiff had the RFC to perform a range of medium work. (AR 26-
12 27.) In doing so, she accorded "little weight" to Dr. Enriquez's
13 opinion that Plaintiff had no physical limitations because
14 "subsequent diagnostic studies and clinical findings" "call[ed]
15 for some functional limitations." (AR 29.) The ALJ also
16 accorded little weight to the consulting physicians' opinions,
17 noting that they "did not have the benefit of reviewing
18 subsequently submitted medical evidence." (Id.) Finally, the
19

20 ¹⁴ Diclofenac is a NSAID used to relieve mild to moderate
21 pain, tenderness, swelling, and stiffness caused by osteoarthritis
22 and other conditions. Diclofenac, MedlinePlus,
<http://www.nlm.nih.gov/medlineplus/druginfo/meds/a689002.html> (last
updated Dec. 15, 2014).

23 ¹⁵ "Total knee arthroplasty" is knee-replacement surgery.
24 Knee replacement, Mayo Clinic, [http://www.mayoclinic.org/
tests-procedures/knee-replacement/basics/definition/prc-20019202](http://www.mayoclinic.org/tests-procedures/knee-replacement/basics/definition/prc-20019202)
25 (last updated Oct. 30, 2012).

26 ¹⁶ "Viscosupplementation is a procedure in which a thick
27 fluid called hyaluronate is injected into the knee joint."
28 Viscosupplementation, Cleveland Clinic, [http://
my.clevelandclinic.org/health/treatments_and_procedures/hic_
viscosupplementation](http://my.clevelandclinic.org/health/treatments_and_procedures/hic-viscosupplementation) (last accessed Feb. 9, 2015).

1 ALJ accorded "little weight" to Nurse Stevenson's opinion because
2 it was not supported by the medical evidence. (Id.)

3 3. Analysis

4 In formulating Plaintiff's RFC, the ALJ stated that she had
5 considered "the opinions of the State agency review physicians,
6 the opinions of the consultative examiner, the opinions of the
7 claimant's treating consultants, the claimant's testimony, her
8 behavior at the hearing, her past medical history, and the
9 diagnostic and clinical findings of record" and "str[uck] a
10 balance" among all of that evidence. (Id.) Plaintiff argues
11 that the ALJ's RFC assessment was erroneous because she should
12 not have rejected Nurse Stevenson's opinions (J. Stip. at 25-26)
13 and because "no medical record supports a capacity for medium
14 work" (id. at 5).

15 The ALJ did not err in rejecting Nurse Stevenson's opinions.
16 As an initial matter, the ALJ correctly noted that Stevenson was
17 a nurse practitioner and "not a licensed psychologist or
18 physician"; thus, she did "not qualify as an acceptable medical
19 source." (AR 29); see §§ 404.1513(a) (listing "acceptable
20 medical sources"), 416.913(a); §§ 404.1513(d) (nurse
21 practitioners are "other sources"), 416.913(d) (same). Because
22 Nurse Stevenson was considered an "other source" under the
23 agency's regulations, the ALJ needed to provide only "germane"
24 reasons for rejecting her opinions. See Molina v. Astrue, 674
25 F.3d 1104, 1111 (9th Cir. 2012).

26 The ALJ rejected Nurse Stevenson's opinions because they
27 were "not supported by the medical evidence." (AR 29.) As the
28 ALJ observed (AR 28), Plaintiff did not complain to her medical

1 providers of left-knee pain until she visited the emergency room
2 in June 2011, years after her alleged onset date of October 2008.
3 (AR 247.) In July 2011, Nurse Stevenson found only moderate-to-
4 severe tenderness and slight swelling; she prescribed Ultram and
5 recommended that Plaintiff start swimming. (AR 286.) In August
6 2011, Stevenson diagnosed left-knee osteoarthritis and noted
7 Plaintiff's report that Ultram was "working well." (AR 285.)
8 Despite those minimal findings, that same day Nurse Stevenson
9 opined that Plaintiff had significant physical limitations,
10 consisting of lifting only 10 pounds and standing or walking up
11 to an hour at a time for a total of two hours in an eight-hour
12 day. (AR 259.) Moreover, Plaintiff did not again seek treatment
13 for her knee impairment until seven months later, in March 2012,
14 when she requested pain medication and Nurse Stephenson noted
15 that she a "limping gait" and a "tender and swollen" left knee.¹⁷
16 (AR 283.) That same day, Nurse Stevenson opined that Plaintiff
17 had even more significant limitations than in her previous
18 opinion, stating that Plaintiff could lift only 10 pounds, sit
19 two hours at a time, and stand or walk a half hour at a time for
20 a total of two hours in an eight-hour day. (AR 269.) Such
21 relatively mild examination results fail to support Nurse
22 Stevenson's finding of significant limitations. Moreover, as the
23 ALJ also noted, Nurse Stevenson's finding that Plaintiff was
24 limited to lifting less than 10 pounds was "not supported by the
25 medical evidence" showing that Plaintiff "had a lower extremity
26 impairment that would not significantly affect her ability to

27
28 ¹⁷ During this entire period, Plaintiff had medical insurance. (See AR 287.)

1 lift." (AR 29.) The ALJ permissibly discounted Nurse
2 Stevenson's opinions. See Bayliss, 427 F.3d at 1218
3 ("[i]nconsistency with medical evidence" is germane reason for
4 discounting lay opinion); cf. Thomas v. Barnhart, 278 F.3d 947,
5 957 (9th Cir. 2002) ("The ALJ need not accept the opinion of any
6 physician, including a treating physician, if that opinion is
7 brief, conclusory, and inadequately supported by clinical
8 findings.").

9 The medical records also fail to support Nurse Stevenson's
10 opinion because they show that Plaintiff received only
11 conservative treatment for her knee condition. (See AR 28 (ALJ's
12 finding that Plaintiff received only "routine" and "conservative"
13 treatment for left-knee pain).) As noted above, Nurse Stevenson
14 prescribed medication to treat Plaintiff's allegedly disabling
15 knee impairment (see AR 283, 288-86) and she noted that Ultram
16 was "working well" (AR 285). In May 2012, a physician's
17 assistant reviewed Plaintiff's MRI and x-ray reports and noted
18 that total-knee arthroplasty "may" be required "in the future,"
19 but she treated Plaintiff's knee pain conservatively, with a
20 cortisone injection and medication. (AR 296.) That Plaintiff
21 received only conservative treatment was a germane reason for
22 discounting Nurse Stevenson's opinion. Cf. McKnight v. Comm'r
23 Soc. Sec., No. 1:12-cv-00726-AWI-JLT, 2013 WL 3773864, at *9
24 (E.D. Cal. July 17, 2013) (ALJ properly discounted physician's
25 opinion based on claimant's positive response to conservative
26 treatment, including knee injections and pain medication).

27 Nor did the ALJ err in formulating an RFC for medium work.
28 The ALJ noted that "the positive objective clinical findings"

1 since the alleged onset date "do not support more restrictive
2 functional limitations" than those in the RFC (AR 28) and that
3 Plaintiff had "not been deprived of the ability to perform work
4 subject to the [RFC] assessed by this decision for any 12-month
5 period since the alleged onset date" (AR 30). Indeed, in May
6 2011, Dr. Enriquez found that Plaintiff's knees had normal ranges
7 of motion and no tenderness, her motor strength was 5/5
8 throughout, her sensation was intact, her gait and balance were
9 normal, and she did not require an assistive device to walk. (AR
10 240-41.) Dr. Enriquez found that Plaintiff had "no impairment-
11 related physical limitations." (AR 241.) Although the ALJ gave
12 little weight to Dr. Enriquez's conclusion that Plaintiff had no
13 functional limitations, the doctor's benign examination findings
14 nevertheless lend support to the ALJ's determination that
15 Plaintiff could perform a range of medium work. Moreover, as
16 discussed, the ALJ reasonably found that Plaintiff had received
17 only conservative treatment for her allegedly totally disabling
18 left-knee impairment, which also tends to support the RFC
19 assessment.

20 Plaintiff nevertheless argues that the ALJ "improperly
21 substitut[ed] her opinion for that of a medical opinion because
22 the ALJ must rely on some opinion or evidence when determining
23 [Plaintiff's] RFC." (J. Stip. at 5 (citing Tackett v. Apfel, 180
24 F.3d 1094, 1102-03 (9th Cir. 1999) (finding ALJ improperly
25 rejected treating and examining physicians' opinions based on his
26 own assessment of plaintiff's testimony).) It is true that an
27 ALJ may not substitute her own opinion for a doctor's
28 professional interpretation of clinical testing. See Day v.

1 Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975) (noting that
2 hearing examiner erred by failing to "set forth any specific
3 reasons for rejecting the . . . doctors' uncontroverted
4 conclusions" and instead making "his own exploration and
5 assessment as to claimant's physical condition" even though he
6 "was not qualified as a medical expert"). But here, the ALJ did
7 not improperly substitute her own lay opinion for any medical
8 opinion; rather, she carefully analyzed the various medical
9 opinions, treatment records, and Plaintiff's own testimony in
10 formulating an RFC. The ALJ therefore acted within her
11 authority. See Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir.
12 2001) ("It is clear that it is the responsibility of the ALJ, not
13 the claimant's physician, to determine residual functional
14 capacity."); §§ 404.1546(c) ("[T]he administrative law judge
15 . . . is responsible for assessing your residual functional
16 capacity."), 416.946(c) (same). Indeed, no "acceptable medical
17 source" has ever opined that Plaintiff had more significant
18 physical limitations than those reflected in the RFC; rather, the
19 three doctors who rendered opinions, one of whom performed a
20 examination, found that Plaintiff had no physical limitations.
21 See Mills v. Comm'r of Soc. Sec., No. 2:13-CV-0899-KJN, 2014 WL
22 4195012, at *4 n.8 (E.D. Cal. Aug. 22, 2014) (noting that
23 "plaintiff can hardly fault the ALJ for giving him the benefit of
24 the doubt and assessing an RFC that is more favorable to
25 plaintiff than most of the medical opinions in the record"). The
26 ALJ therefore did not err in assessing Plaintiff's RFC.

27 Plaintiff argues that her left-knee MRI, which showed a
28 meniscus tear and mild osteoarthritis (AR 271-72), established

1 that she should be limited to sedentary work. (J. Stip. at 3.)
2 But that MRI was not performed until March 2012, three and a half
3 years after her alleged onset date and less than 12 months before
4 the ALJ rendered her decision. (AR 271-72.) And as previously
5 discussed, after reviewing the MRI, a physician's assistant
6 treated Plaintiff's left-knee condition conservatively, with a
7 cortisone injection and medication. (AR 296.) Plaintiff
8 contends that even though the MRI was not conducted until March
9 2012, "the original injury dates back to . . . when [Plaintiff]
10 went to the ER on October 14, 2007." (J. Stip. at 3.) But the
11 notes from that emergency-room visit fail to reflect any left-
12 knee problems; to the contrary, Plaintiff complained of right-leg
13 pain and was diagnosed with a strained hamstring. (See AR 274-
14 76.) Plaintiff, moreover, did not complain of any leg or knee
15 pain for years after that emergency-room visit. (See, e.g., AR
16 288-89, 291-93.)

17 Plaintiff contends that the ALJ erred by not addressing the
18 arguments in her post-hearing brief. (J. Stip. at 4.) But that
19 brief mainly summarized the evidence and argued that it "supports
20 a finding that [Plaintiff] is limited to sedentary work." (See
21 AR 231-32.) As previously discussed, the ALJ adequately
22 summarized and addressed the medical records and concluded that
23 Plaintiff could perform a range of medium work. (See AR 27-30.)
24 Finally, Plaintiff argues that "nowhere in the decision does the
25 ALJ provide her reasoned analysis concerning [Plaintiff's]
26 extreme obesity." (J. Stip. at 6.) But the ALJ clearly did
27 assess Plaintiff's obesity, stating, among other things, that she
28 had "considered the potential impact of obesity in causing or

1 contributing to the co-existing impairments" and that no evidence
2 showed "any specific or quantifiable impact on pulmonary,
3 musculoskeletal, endocrine, or cardiac functioning." (AR 26.)

4 As such, Plaintiff's argument fails. In any event, Plaintiff has
5 not challenged the ALJ's finding that her obesity was not severe.

6 Because the ALJ's interpretation of the medical evidence was
7 reasonable and supported by substantial evidence, remand is not
8 warranted on this ground. See Molina, 674 F.3d at 1111 ("Even
9 when the evidence is susceptible to more than one rational
10 interpretation, we must uphold the ALJ's findings if they are
11 supported by inferences reasonably drawn from the record.");
12 Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008) (ALJ is
13 "final arbiter with respect to resolving ambiguities in the
14 medical evidence").

15 B. The ALJ Properly Assessed Plaintiff's Credibility

16 Plaintiff contends that the ALJ erroneously discounted her
17 subjective symptom testimony. (J. Stip. at 14-18.)

18 1. Applicable law

19 An ALJ's assessment of symptom severity and claimant
20 credibility is entitled to "great weight." See Weetman v.
21 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
22 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
23 believe every allegation of disabling pain, or else disability
24 benefits would be available for the asking, a result plainly
25 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina, 674 F.3d at 1112
26 (internal quotation marks omitted).

27 In evaluating a claimant's subjective symptom testimony, the
28 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d

1 at 1035-36. "First, the ALJ must determine whether the claimant
2 has presented objective medical evidence of an underlying
3 impairment [that] could reasonably be expected to produce the
4 pain or other symptoms alleged." Id. at 1036 (internal quotation
5 marks omitted). If such objective medical evidence exists, the
6 ALJ may not reject a claimant's testimony "simply because there
7 is no showing that the impairment can reasonably produce the
8 degree of symptom alleged." Smolen v. Chater, 80 F.3d 1273, 1282
9 (9th Cir. 1996) (emphasis in original).

10 Second, if the claimant meets the first test, the ALJ may
11 discredit the claimant's subjective symptom testimony only if he
12 makes specific findings that support the conclusion. See Berry
13 v. Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding
14 or affirmative evidence of malingering, the ALJ must provide
15 "clear and convincing" reasons for rejecting the claimant's
16 testimony. Lester, 81 F.3d at 834; Ghanim v. Colvin, 763 F.3d
17 1154, 1163 & n.9 (9th Cir. 2014).

18 In assessing a claimant's credibility, the ALJ may consider
19 (1) ordinary techniques of credibility evaluation, such as the
20 claimant's reputation for lying, prior inconsistent statements,
21 and other testimony by the claimant that appears less than
22 candid; (2) unexplained or inadequately explained failure to seek
23 treatment or to follow a prescribed course of treatment; (3) the
24 claimant's daily activities; (4) the claimant's work record; and
25 (5) testimony from physicians and third parties. Thomas, 278
26 F.3d at 958-59; Smolen, 80 F.3d at 1284. If the ALJ's
27 credibility finding is supported by substantial evidence in the
28 record, the reviewing court "may not engage in second-guessing."

1 Thomas, 278 F.3d at 959.

2 2. Relevant background

3 In an undated disability report, Plaintiff reported that she
4 was unable to work because of high blood pressure, a heart
5 murmur, and high cholesterol. (AR 199.)

6 In a February 2011 function report, Plaintiff reported that
7 she could not work because of high blood pressure. (AR 209.)
8 Her daily activities included showering, making breakfast, and
9 doing "daily housewife chores" (AR 208), including cleaning and
10 doing laundry (AR 210). Plaintiff cooked daily, preparing
11 sandwiches, salads, and complete meals. (Id.) She shopped in
12 stores for 45 minutes twice a month. (AR 211.) Plaintiff had
13 "no problem" with her personal care (AR 209), and her hobbies
14 included sewing, which she did once a week "when [she was] able
15 to." (AR 212.) She went to church every other Sunday when she
16 had "the energy to go." (Id.)

17 Plaintiff claimed that as she was "going about her day" she
18 "sometimes fe[lt] shaky & dizzy." (AR 208.) She did not drive
19 because of her "medication side affects [sic] instructions in
20 getting drowsy." (AR 211.) Her condition affected her ability
21 to climb stairs, and she could walk for one hour before needing
22 to rest for one hour. (AR 213.)

23 In a July 2011 disability report, Plaintiff wrote that she
24 was "hospitalized for ongoing leg problems" in June 2011 and
25 needed to wear compression stockings. (AR 218.) In an undated
26 disability report, Plaintiff wrote that as of August 2011, her
27 daily activities were "getting worse to do" and she "struggle[d]
28 a lot." (AR 226.) She was "very limited to stand and walk" and

1 could not "do this for long periods of time." (Id.) She wrote
2 that "[d]ue to her pain, swelling, and stiffness it is very
3 difficult to perform her daily activities"; she needed help
4 getting in and out of chairs and dressing. (AR 228.) She wrote
5 that she was in "constant pain" because of her osteoarthritis.
6 (Id.)

7 At the July 2012 hearing, Plaintiff testified that she was
8 unable to work because of left-knee pain. (AR 46.) Plaintiff
9 testified that she had been taking tramadol for pain for the
10 previous two months and had been prescribed a different
11 medication before that. (AR 46-47.) The most Plaintiff was able
12 to walk was the distance from her car to the ALJ's hearing room.
13 (Id.) She could stand for a half hour before needing to sit or
14 rest for a half hour. (AR 49.) Plaintiff testified that she was
15 suffering from depression but was not taking medication or
16 receiving counseling for it. (AR 47-48.)

17 Plaintiff testified that she had no difficulty preparing
18 simple meals and taking care of her personal hygiene, such as
19 dressing herself. (AR 43.) Her daughter and husband helped her
20 do chores. (Id.) She could vacuum a little bit and went grocery
21 shopping with her husband for an hour two or three times a month.
22 (AR 43-44.) She read books, knitted, and watched television for
23 about two hours a day. (AR 44-45.) She also attended church
24 with her husband every once in a while. (AR 45.)

25 3. Analysis

26 The ALJ found that Plaintiff's "medically determinable
27 impairment could reasonably be expected to cause some of the
28 alleged symptoms" but that her "statements concerning the

1 intensity, persistence and limiting effects of these symptoms are
2 not credible to the extent [they] are inconsistent with" her RFC.
3 (AR 27.) As discussed below, the ALJ provided clear and
4 convincing reasons, supported by substantial evidence, for
5 discounting Plaintiff's credibility.

6 The ALJ noted that although Plaintiff testified at the
7 hearing that she was unable to work because of her left-knee
8 pain, "the record did not show any evidence of ongoing treatment
9 for this alleged impairment until June of 2011, over two and a
10 half years after the alleged onset date." (AR 28.) Such a
11 failure to seek treatment is a clear and convincing reason for
12 discounting Plaintiff's credibility. See Orn v. Astrue, 495 F.3d
13 625, 638 (9th Cir. 2007); Fair v. Bowen, 885 F.2d 597, 603 (9th
14 Cir. 1989) (ALJ may rely on "unexplained, or inadequately
15 explained, failure to seek treatment" in rejecting claimant's
16 credibility). Plaintiff contends that "[a] lack of treatment
17 prior to 2011 is explained by the fact [that Plaintiff] did not
18 have insurance until 2011" (J. Stip. at 16), citing a July 2011
19 treatment note stating that Plaintiff "request[s] new cardiology
20 referral now that she has insurance - she didn't have any before"
21 (AR 287). But even during that visit, when Plaintiff apparently
22 was insured, she did not complain of leg or knee pain. (Id.)
23 Indeed, musculoskeletal and neurological examinations were normal
24 and her diagnoses included only dyslipidemia, hypertension, and
25 cardiac murmur. (Id.) Moreover, even if Plaintiff lacked
26 insurance before July 2011, she nevertheless sought medical care
27 on several occasions in the years before that date and did not
28 complain of left-knee pain at any of those visits. (See, e.g.,

1 AR 274-76, 288-93.) And although Plaintiff contends that her
2 left-knee impairment "dates back to . . . when [she] went to the
3 ER on October 14, 2007" (J. Stip. at 17), as previously
4 discussed, at that visit Plaintiff complained of only right-leg
5 pain and was diagnosed with a hamstring strain (AR 274-76).

6 The ALJ also permissibly discounted Plaintiff's credibility
7 because she told Dr. Enriquez that her right knee hurt more than
8 her left (AR 238), which was inconsistent with her statements at
9 the hearing and to other doctors that she was disabled by left-
10 knee pain. (AR 28; see also AR 46, 282-83); see Smolen, 80 F.3d
11 at 1284 (in assessing credibility, ALJ may consider "ordinary
12 techniques of credibility evaluation," such as prior inconsistent
13 statements). Plaintiff contends that her statement may have been
14 attributable to "some error in the translation because Social
15 Security did not employ a certified interpreter for translating,
16 but instead utilized [Plaintiff's] daughter." (J. Stip. at 17
17 (citing AR 238).) But Plaintiff's speculative argument shows, at
18 most, that the evidence was susceptible of different
19 interpretations; that is insufficient to warrant remand. See
20 Ryan, 528 F.3d at 1198 (when "evidence is susceptible to more
21 than one rational interpretation, the ALJ's decision should be
22 upheld" (internal quotation marks omitted)).

23 The ALJ also found that Plaintiff "received routine
24 conservative treatment" for her left-knee pain. (AR 28.)
25 Indeed, as previously discussed, Plaintiff's condition was
26 treated primarily with medication, which was noted to be helpful
27 (see, e.g., AR 285-86), and later with a single cortisone
28 injection (see AR 296). The ALJ permissibly discounted

1 Plaintiff's credibility on that basis. See Parra, 481 F.3d at
2 751 (noting that "evidence of 'conservative treatment' is
3 sufficient to discount a claimant's testimony regarding severity
4 of an impairment"); Tommasetti, 533 F.3d at 1040 (response to
5 conservative treatment undermines allegations of disabling
6 impairment); Walter v. Astrue, No. EDCV 09-1569 AGR, 2011 WL
7 1326529, at *3 (C.D. Cal. Apr. 6, 2011) (ALJ permissibly
8 discounted plaintiff's credibility based on "conservative
9 treatment," including medication, physical therapy, and
10 injection).

11 In sum, the ALJ provided clear and convincing reasons for
12 discrediting Plaintiff's subjective complaints. Because those
13 findings were supported by substantial evidence, this Court may
14 not engage in second-guessing. See Thomas, 278 F.3d at 959.
15 Plaintiff is not entitled to remand on this ground.

16 C. Remaining Issue

17 Plaintiff contends the ALJ improperly found that she
18 performed her past relevant work as a janitor at the light
19 exertional level. (J. Stip. at 29-30.) Plaintiff acknowledges,
20 however, that "[i]f the Court finds that [she] is capable of
21 medium work, this contention is irrelevant." (Id. at 32.) As
22 discussed above in Section V.A, the ALJ did not err in finding
23 that Plaintiff had the RFC to perform a range of medium work.
24 The Court therefore does not address this issue.

1 VI. CONCLUSION

2 Consistent with the foregoing, and pursuant to sentence four
3 of 42 U.S.C. § 405(g),¹⁸ IT IS ORDERED that judgment be entered
4 AFFIRMING the decision of the Commissioner and dismissing this
5 action with prejudice. IT IS FURTHER ORDERED that the Clerk
6 serve copies of this Order and the Judgment on counsel for both
7 parties.

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9
10 DATED: February 18, 2015



JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 ¹⁸ This sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record, a
28 judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."