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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	ROSA M. VILLEGAS,)	Case No. CV 17-03794-KES
12	Plaintiff,)	
13	v.)	
14)	MEMORANDUM OPINION
15	NANCY A. BERRYHILL, Acting)	AND ORDER
16	Commissioner of Social Security,)	
17	Defendant.)	
18)	

I.
BACKGROUND

In September 2013, Plaintiff Rosa M. Villegas (“Plaintiff”) applied for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”), alleging disability beginning March 1, 2012. Administrative Record (“AR”) 217-20, 223-25. The Administrative Law Judge (“ALJ”) convened a hearing on July 30, 2015, at which Plaintiff, who was represented by a lawyer, appeared and testified. AR 38-69. On August 20, 2015, the ALJ issued a written decision

1 denying Plaintiff's request for benefits. AR 11-25.

2 The ALJ found that Plaintiff suffers from the medically determinable severe
3 impairments of degenerative disc disease and osteoarthritis. AR 19. Despite these
4 impairments, the ALJ found that Plaintiff has the residual functional capacity
5 ("RFC") to perform the exertional demands of medium work with only "frequent"
6 postural activities (i.e., climbing ladders, ropes, scaffolds, stairs and ramps;
7 balancing; stooping; kneeling; crouching; and crawling). AR 20 (citing 20 C.F.R.
8 §§ 404.1567; 416.967). Medium work generally requires lifting up to 50 pounds
9 occasionally and 25 pounds frequently, and standing/walking for up to six hours
10 per workday. Social Security Ruling ("SSR") 83-10, 1983 WL 31251.

11 Based on this RFC and the testimony of a vocational expert ("VE"), the ALJ
12 found that Plaintiff could perform her past relevant work as a garment sorter (light
13 work), hand packager (medium work), and quality control inspector (light work).
14 AR 24, 60. The ALJ therefore concluded that Plaintiff was not disabled. AR 25.

15 II.

16 ISSUE PRESENTED

17 Plaintiff's appeal raises the sole issue of whether the ALJ's RFC
18 determination is supported by substantial evidence. (Dkt. 19, Joint Stipulation
19 ["JS"] at 4.) Only one doctor – a non-examining state agency physician Dr. Estrin
20 – provided an opinion about Plaintiff's RFC. In December 2013, Dr. Estrin
21 considered Plaintiff's medical records and opined that Plaintiff could perform
22 medium work with frequent postural activities, but was limited to "occasional"
23 pushing/pulling with her right leg. AR 76-77.

24 The ALJ ultimately gave "no substantial weight" to Plaintiff's treating
25 physicians' opinions and only "partial weight" to Dr. Estrin's opinion, accepting
26 that Plaintiff could do medium work but rejecting his limitation on right leg
27 pushing/pulling. AR 23. The ALJ explained, however, that even if he had
28 accepted Dr. Estrin's opinion in full, it would not have changed the ALJ's ultimate

1 determination, because Plaintiff’s prior jobs do not require pushing or pulling with
2 lower extremities, per their description in the Dictionary of Occupational Titles.
3 AR 23 n.1.

4 Plaintiff argues that (1) Dr. Estrin’s opinion does not constitute substantial
5 evidence, because Dr. Estrin did not have an opportunity to review Plaintiff’s 2014
6 and 2015 medical records, and (2) the ALJ cherry-picked the 2014-2015 medical
7 evidence to support his conclusion that Plaintiff could do medium work. (JS at 4-
8 11.) For the reasons discussed below, the Court AFFIRMS the ALJ’s decision.

9 III.

10 LEGAL STANDARDS

11 A. **Administrative Burdens of Production and Proof.**

12 A person is “disabled” for purposes of receiving Social Security benefits if
13 he is unable to engage in any substantial gainful activity owing to a physical or
14 mental impairment that is expected to result in death or which has lasted, or is
15 expected to last, for a continuous period of at least twelve months. 42 U.S.C.
16 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992). The ALJ
17 follows a five-step sequential evaluation process in assessing whether a claimant is
18 disabled. 20 C.F.R. § 416.920(a)(4).

19 The claimant bears the burden of producing evidence to support a finding of
20 disability. See 42 U.S.C. § 423(d)(5) (“An individual shall not be considered to be
21 under a disability unless he furnishes such medical and other evidence of the
22 existence thereof as the Secretary may require”). A claimant must produce
23 evidence demonstrating that he/she was disabled within the relevant time period.
24 Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995). As the Code of Federal
25 Regulations further explains:

26 [Y]ou have to prove to us that you are blind or disabled. You must
27 inform us about or submit all evidence known to you that relates to
28 whether or not you are blind or disabled. This duty is ongoing and

1 requires you to disclose any additional related evidence about which
2 you become aware. This duty applies at each level of the
3 administrative review process, including the Appeals Council level if
4 the evidence relates to the period on or before the date of the
5 administrative law judge hearing decision. We will consider only
6 impairment(s) you say you have or about which we receive evidence.

7 20 C.F.R. § 416.912(a) (version in effect from April 20, 2015 to March 26, 2017).¹

8 At step four of the sequential analysis, the claimant has the burden to prove
9 that he/she cannot perform any prior relevant work “either as actually performed or
10 as generally performed in the national economy.” Carmickle v. Comm’r of SSA,
11 533 F.3d 1155, 1166 (9th Cir. 2008) (citation omitted). “Although the burden of
12 proof lies with the claimant at step four, the ALJ still has a duty to make the
13 requisite factual findings to support his conclusion.” Pinto v. Massanari, 249 F.3d
14 840, 844 (9th Cir. 2001) (citations omitted). The ALJ must make specific findings
15 as to (1) “the claimant’s residual functional capacity”; (2) “the physical and mental
16 demands of the past relevant work”; and (3) “the relation of the residual functional
17 capacity to the past work.” Id. at 845 (citing SSR 82-62, 1982 WL 31386).

18 **B. Rules for Determining a Claimant’s RFC.**

19 A claimant’s RFC is an assessment of his/her ability to do sustained, work-
20 related physical and mental activities in a work setting on a regular and continuing
21 basis of eight hours a day, for five days a week, or equivalent work schedule. SSR
22 96-8p, 1996 WL 362207. The RFC assessment considers only functional
23 limitations and restrictions which result from an individual’s medically
24 determinable impairment or combination of impairments. Id. In determining a
25

26 ¹ The Court applies the version of the regulations in effect when the ALJ
27 issued the August 20, 2015 decision. See Rose v. Berryhill, 256 F. Supp. 3d 1079,
28 1083, n.3 (C.D. Cal. June 13, 2017).

1 claimant’s RFC, the ALJ should consider those limitations for which there is
2 support in the record, but the ALJ need not consider properly rejected evidence of
3 non-severe impairments or subjective complaints. Bayliss v. Barnhart, 427 F.3d
4 1211, 1217 (9th Cir. 2005) (“Preparing a function-by-function analysis for medical
5 conditions or impairments that the ALJ found neither credible nor supported by the
6 record is unnecessary.”); Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d 1190,
7 1197 (9th Cir. 2004) (“The ALJ was not required to incorporate evidence from the
8 opinions of Batson’s treating physicians, which were permissibly discounted.”).

9 **C. Standard of Review on Appeal.**

10 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
11 decision to deny benefits. The ALJ’s findings and decision should be upheld if
12 they are free from legal error and are supported by substantial evidence based on
13 the record as a whole. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389,
14 401 (1971); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
15 evidence means such relevant evidence as a reasonable person might accept as
16 adequate to support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter v.
17 Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). To determine whether substantial
18 evidence supports a finding, the reviewing court “must review the administrative
19 record as a whole, weighing both the evidence that supports and the evidence that
20 detracts from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715,
21 720 (9th Cir. 1998). “If the evidence can reasonably support either affirming or
22 reversing,” the reviewing court “may not substitute its judgment” for that of the
23 Commissioner. Id. at 720-21.

24 **IV.**

25 **DISCUSSION**

26 **A. Overview of the Relevant Medical Evidence.**

27 Plaintiff provided treating records from Clinica Romera (AR 327-58, 392-
28 94), Dr. Daniel Tran of the Ardmore Medical Group (AR 397-436, 471-95, 512-

1 25), orthopedic surgeon Dr. Charles Alexander of the Los Angeles Arthritis and
2 Joint Replacement Medical Group (AR 376-80, 465-69), Dr. Kevin Pelton of LA
3 Orthopaedic Surgery Specialists (AR 445-47, 497-99), and Dr. Shane Pak of
4 Pacific Orthopaedic Medical Group (AR 505-11), as well as imaging records (AR
5 449-63, 500-01).

6 Dr. Estrin’s opinion mentions only two prior treating records: (1) a
7 September 14, 2013 right knee x-ray (which is almost certainly a typographical
8 error and intended to reference Plaintiff’s September 14, 2012 “normal” knee
9 imaging study²) and (2) a June 12, 2013 progress note from Clinica Romera. AR
10 77. That progress note says Plaintiff was complaining of left leg swelling and right
11 knee pain, but she was not taking any pain medication and she denied instability.
12 AR 329. Regarding Plaintiff’s right knee, the clinic noted, “FROM [full range of
13 motion], (+) L JL tenderness [positive for lateral joint line tenderness], Ø L, Dr,
14 Mo, Ø effusion.” Id. The progress note also says “® knee pain é IDK [right knee
15 pain with internal derangement].” Id.

16 In the JS, Plaintiff summarizes her subsequent medical records in
17 chronological order, starting with a right knee MRI taken on November 7, 2013,
18 which revealed osteoarthritis with “focal full-thickness cartilage defect within the
19 lateral femoral weightbearing surface cartilage and an intra-articular body in the
20 posteromedial joint recess” (AR 451) and concluding with April 2015 records
21 discussing “bilateral knee osteoarthritis” (AR 522). (JS at 5-7.) Plaintiff’s
22 summary largely focuses on what Plaintiff reported to her doctors rather than what
23 her doctors observed. (Id.)

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26 ² In the JS, neither party identifies where Plaintiff’s September 14, 2013 x-
27 ray results can be found in the AR. Imaging results from September 14, 2012,
28 however, are at AR 349-50. Those results say, “normal study,” which is how Dr.
Estrin summarizes the “2013” record. Compare AR 77 and AR 50.

1 **B. The ALJ’s Assessment of the Evidence.**

2 The ALJ acknowledged that Plaintiff “does have a long history of right knee
3 pain” with intermittent “swelling and tenderness.” AR 22. The ALJ found that
4 Plaintiff’s knee pain did not limit Plaintiff from performing medium work for
5 several reasons. First, the ALJ cited treating records consistently finding that
6 Plaintiff had a full range of motion in her right knee. AR 22, citing AR 329 and
7 AR 404.

8 Second, the ALJ cited records that Plaintiff’s knee pain had responded well
9 to injections. AR 22, citing Exhibit 5F. That exhibit contains the following
10 records:

11 • April 2014 “new patient evaluation” by Dr. Alexander. He noted, “patient
12 has been complaining of right knee pain for about a year.” AR 377. Her “right
13 knee has full extension and flexion, no effusion, and no synovitis” but “definite
14 medical as well as lateral joint line pain.” Id. Dr. Alexander reviewed a prior x-
15 ray and concluded it showed “minimal, if any, loss of joint space height, and very
16 mild arthritic changes.” Id. He diagnosed her with internal derangement of the
17 right knee and gave her an injection, causing “some improvement.” AR 377-78.
18 He recommended physical therapy and a follow-up appointment in six weeks. AR
19 378.

20 • May 2014 progress note. Concerning Plaintiff’s right knee pain, the
21 medical assistant (“MA”) wrote, “injection still working – moderate helpful” and
22 “no PT – she never called. Doing well. Normal gait.” AR 376. This record rates
23 Plaintiff’s pain as “0” on a scale of 0-10. Id.

24 Third, the ALJ noted that Plaintiff had declined physical therapy for her
25 knee, citing the same records. AR 22.

26 Fourth, the ALJ found that Plaintiff’s claims of disabling knee pain were not
27 supported by her x-rays and MRIs, citing the x-ray discussed by Dr. Alexander
28 (AR 377) and the MRI taken on November 7, 2013 (AR 451). AR 22. While the

1 ALJ acknowledged that the November 2013 MRI revealed signs of osteoarthritis,
2 the ALJ concluded that the disease was not causing Plaintiff knee pain inconsistent
3 with medium work, because her later “physical examinations continued to be
4 largely unremarkable with normal balance, gait, posture, and normal strength and
5 tone.” AR 22, citing AR 471-95 (2014 treating records from Ardmore Medical
6 Group).

7 Plaintiff’s treating records from Ardmore include the following:

8 • January 20, 2014 new patient initial health assessment. AR 474. The MA
9 wrote, “She complains of moderate right knee pain for the past one year. It has
10 hampered her ability to ambulate comfortably. She can now only walk up to three
11 city blocks without resting. ... Her treatment with her previous provider included
12 radiographic study and pain medication. No other joint is affected. Otherwise, she
13 is doing well.” Id. The MA also noted, “Mild active decrease range of motion of
14 the right knee due to discomfort. Right knee without swelling or warmth.” AR
15 473. The MA observed, “Gait, stance and balance are normal.” Id. The
16 recommendation was to “continue with ibuprofen as needed” and engage in
17 “routine daily exercise” while Ardmore waited to receive her previous right knee
18 x-ray. AR 472.

19 • January 28, 2014 follow-up appointment. AR 476. Ardmore interpreted
20 her 2014 x-rays as showing “mild right knee degenerative changes ...” attributed
21 to osteoarthritis. Id. Plaintiff reported that her right knee pain has “progressively
22 worsened” over the last year. AR 476. She was referred to “orthopedics” to
23 evaluate her knee pain. AR 475.

24 • February 26, 2014 second follow-up appointment. AR 478. Ardmore
25 noted that prior records from Clinica Romero showed a history of osteoarthritis of
26 the knee, treatment with NSAIDs, and “no physical therapy or specialist
27 consultation.” Id. Upon examination, both Plaintiff’s knees were “without
28 swelling or warmth. No significant decrease range of motion. Mild tender

1 anteriorly at patella and patellar tendon.” Id. While she was still “awaiting
2 orthopedics consultation,” she was encouraged to walk and engage in exercise to
3 lose weight. Id.

4 • March 20, 2014 third follow-up appointment. AR 480. Plaintiff reported
5 worsening pain in her right knee causing difficulty walking. Id. Ardmore noted
6 that she had full range of motion in both knees, but “mild tenderness” in the right
7 knee. Id. She had an orthopedics consultation scheduled for April 3, 2014, which
8 was her appointment with Dr. Alexander, discussed above. AR 480, 377.

9 • May 5, 2014 Ardmore appointment. AR 482. This appointment concerned
10 a skin rash and merely noted, “She has been consulting with orthopedics for the
11 knee pain.” Id.

12 • June 26, 2014 Ardmore appointment. AR 484. The MA noted that
13 Plaintiff has “moderate pain of the right knee” but “injection of the right knee [by
14 Dr. Alexander] has alleviated some symptoms. [Plaintiff] has failed to obtain MRI
15 of the right knee as requested by orthopedics. However, she has been scheduled
16 for physical therapy sessions” Id. The MA again observed that both knees had
17 a full range of motion with “mild” tenderness of the right knee. Id.

18 • July 16, 2014 Ardmore appointment. AR 486. Plaintiff provided “no new
19 complaint” but still had “moderate pain of the right knee.”

20 The administrative record contains later medical evidence also discussing
21 Plaintiff’s knee pain and a new complaint of back pain, including:

22 • October 1, 2014: Plaintiff consulted with Dr. Pelton complaining of back
23 pain. AR 498. He observed that her gait was “stable” but “antalgic on the right
24 but not broad-based.” Id. He also observed normal muscle tone in her lower
25 extremities and that her “motion is without pain, crepitus, or evident instability.”
26 Id.

27 • November 14, 2014: MRI study of Plaintiff’s lumbar spine. AR 500-01.
28 The MRI revealed various abnormalities, including “multilevel spondylosis with

1 posterior disc bulges,” “mild spinal canal stenosis,” and “mild to moderate” neural
2 foraminal narrowing. AR 500.

3 • April 15, 2015: Ardmore observed, “Gait, stance and balance are normal.”
4 AR 520.

5 • April 22, 2015: Plaintiff consulted with Dr. Pak complaining of lower
6 back pain. AR 505. She denied “any additional symptoms.” Id. Upon
7 examination, he observed no tenderness or swelling of either knee, and a “full and
8 painless” range of motion in both knees. AR 507. She had normal muscle tone, no
9 instability, and 5/5 lower extremity strength. Id. He nevertheless noted that her
10 gait was “antalgic due to pain.” AR 508. He attributed her “difficulty walking due
11 to degenerative dz [disease] of the L [lumbar] spine.” AR 509. He did not
12 mention osteoarthritis. He recommended physical therapy and pain medication.
13 Id. He also prescribed a 4-point cane. AR 510.

14 • April 30, 2015: Ardmore again noted that Plaintiff “can ambulate well.”
15 AR 522. Pain medications “meloxicam and naproxen have been effective in
16 controlling her symptoms.” Id. She had no decreased range of motion in her
17 extremities and “gait, stance and balance are normal.” AR 523. She was
18 encouraged to engage in routine daily exercise. AR 525. This is the last progress
19 note in the administrative record.

20 The ALJ discussed all the above-listed treating records. AR 22-23. He
21 noted that at the hearing, while Plaintiff’s counsel initially claimed to have
22 submitted records showing Plaintiff’s participation in physical therapy, counsel
23 later realized that she did not have such records. AR 23, citing AR 44-47. The
24 administrative record still contains no physical therapy reports. The ALJ also
25 noted that Plaintiff mentioned no need for a cane at the hearing, although she
26 testified that she walks slowly “because [her] knees are very swollen” Id.,
27 citing AR 52.

1 **C. The ALJ's RFC Determination Is Supported by Substantial Evidence.**

2 Plaintiff contends that she was disabled as of March 1, 2012. AR 217. Dr.
3 Estrin reviewed her medical records in December 2013, nearly two years after
4 Plaintiff's claimed onset date. In the JS, Plaintiff does not argue that Dr. Estrin's
5 opinion was inconsistent with any medical records that pre-date his report. The
6 opinion of a non-examining physician such as Dr. Estrin constitutes substantial
7 evidence when it is supported by and consistent with other evidence in the record.
8 Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995). Thus, Dr. Estrin's
9 opinion constitutes substantial evidence supporting the ALJ's finding that Plaintiff
10 could perform medium work with the additional specified limitations on postural
11 activities at least from March 2012 through December 2013.

12 Plaintiff argues that her 2014-2015 medical records reveal more functional
13 limitations, such that no reasonable person would view Dr. Estrin's opinion as
14 reliable evidence of her RFC in 2014-2015. (JS at 8.) The administrative record,
15 however, shows that during 2014-2015, treating medical sources generally
16 described Plaintiff's knees as having a full range of motion with no observed
17 deficits in gait. See, e.g., AR 404, 474, 478, 480, 484, 507, 520, 522. Plaintiff
18 obtained significant pain relief through injections (see AR 376 [reporting no post-
19 injection knee pain]) and her primary treating physician observed that "meloxicam
20 and naproxen have been effective in controlling her symptoms." AR 522. These
21 records show Plaintiff pursued limited treatment consistent with suffering non-
22 disabling levels of pain (e.g., medication, no documented physical therapy, no
23 surgery, no pain management specialists). Since Plaintiff's medical records do not
24 show a significant change in Plaintiff's functional limitations over time, the ALJ
25 could reasonably continue to rely, in part, on Dr. Estrin's opinion even when
26 assessing Plaintiff's RFC in 2014 and 2015.

27 Plaintiff accuses the ALJ of cherry-picking only benign medical records
28 saying, "the ALJ stated that Villegas had normal gait. AR 23. But the ALJ

1 ignored those findings of abnormal gait....” (JS at 9.) Plaintiff asserts that the
2 “overall clinical picture reflects that [she] is, in fact, limited in her gait and ability
3 to ambulate.” (JS at 11.)

4 The only abnormal findings concerning Plaintiff’s gait cited by Plaintiff are
5 at AR 445 and AR 498 (Dr. Pelton’s October 1, 2014, observation “gait is antalgic
6 on the right”) and AR 508 (Dr. Pak’s April 22, 2015, observation “gait is antalgic
7 due to pain”).³ Notably, within days on either side of Dr. Pak’s opinion, Plaintiff’s
8 treating sources at Ardmore reported that her gait was normal (4/15/15 record at
9 AR 520; 4/30/15 record at AR 523) and the later record specifically noted that she
10 “can ambulate well.” AR 522. While Plaintiff’s interactions with Dr. Pak caused
11 him to prescribe her a cane, she did not use one at the hearing or tell the ALJ that
12 she ever used one. The ALJ did not err in concluding that the weight of the
13 evidence supports a finding that Plaintiff could ambulate well during the entire
14 period of claimed disability, consistent with the ability to perform medium work.

15 At the hearing, Plaintiff told the ALJ she could no longer work because of
16 lower back pain.⁴ AR 52. The first mention of back pain in the administrative
17 record is when Plaintiff consulted with Dr. Pelton in October 2014, many years
18 after her claimed disability onset date. AR 498. He referred her for an MRI in
19 November 2014 which revealed various abnormalities consistent with

21 ³ Many records reflect that Plaintiff told her doctors she had difficulty
22 walking, but such records do not reflect medical findings. Plaintiff contends that
23 the ALJ “ignored [her] rather consistent report of symptoms regarding difficulties
24 in ambulation.” (JS at 9.) Not so. The ALJ explained why he found Plaintiff’s
25 reports concerning the limiting effects of her pain unsupported (AR 21-23), and
26 Plaintiff did not challenge that finding on appeal.

27 ⁴ At the July 30, 2015 hearing, Plaintiff testified that she last worked around
28 2012 as a packer for a shampoo company, but was laid off when “a lot of people
got laid off.” AR 49. In her application to the Court to proceed in forma pauperis,
Plaintiff declared that she last worked in February 2015. (Dkt. 3.)

1 osteoarthritis and degenerative disc disease. AR 500. The Ardmore progress notes
2 from April 2015 discussed above, however, post-date this MRI, yet still note that
3 Plaintiff had a normal gait and could ambulate well. AR 520-23. The same
4 progress notes also state that “meloxicam and naproxen have been effective in
5 controlling her symptoms.” AR 522. Substantial evidence, therefore, supports the
6 ALJ’s conclusion that Plaintiff’s back pain did not cause functional limitations
7 inconsistent with medium work.

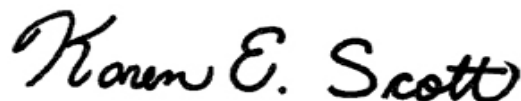
8 In the JS, Plaintiff does not point to any medical opinions other than Dr.
9 Estrin’s discussing how much weight Plaintiff can lift. The fact that Plaintiff
10 suffers from osteoarthritis and degenerative disc disease is not proof that Plaintiff
11 cannot perform lifting consistent with medium work. As the party bearing the
12 burden of production and proof, Plaintiff cannot assert that the ALJ committed
13 legal error by relying on the medical evidence that Plaintiff provided, even if scant.

14 **V.**

15 **CONCLUSION**

16 For the reasons stated above, the decision of the Social Security
17 Commissioner is AFFIRMED.

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19 Dated: February 06, 2018

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21 KAREN E. SCOTT
22 United States Magistrate Judge
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