

BACKGROUND

1
2 Plaintiff is a 47 year-old female who applied for Social Security Disability Insurance
3 benefits on May 24, 2013, alleging disability beginning March 9, 2009.¹ (AR 17.) The ALJ
4 determined that Plaintiff had not engaged in substantial gainful activity during the period from
5 her alleged onset date of March 9, 2009 through her date last insured of December 31, 2014.
6 (AR 20.)

7 Plaintiff's claim was denied initially on September 25, 2013, and on reconsideration on
8 January 30, 2014. (AR 17.) Plaintiff filed a timely request for hearing, which was held before
9 Administrative Law Judge ("ALJ") James Delphey on September 4, 2015, in Los Angeles,
10 California.² (AR 17.) Plaintiff appeared and testified at the hearing and was represented by
11 counsel. (AR 17.) Vocational expert ("VE") Jeff Cochrum testified by telephone. (AR 17.)

12 Plaintiff appeared and testified at a supplemental hearing held on April 8, 2016, in Los
13 Angeles, California.³ (AR 17.) Claimant was again represented by counsel. (AR 17.) VE
14 Ronald K. Hatakeyama also appeared and testified. (AR 17.)

15 The ALJ issued an unfavorable decision on May 6, 2016. (AR 17-28.) The Appeals
16 Council denied review on June 19, 2017. (AR 1-3.)

DISPUTED ISSUES

17
18 As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as
19 grounds for reversal and remand:

- 20 1. Whether the ALJ erred in rejecting Plaintiff's testimony regarding her subjective
21 symptoms and physical limitations.

22
23
24 ¹ The record discloses that Plaintiff filed a previous application for Social Security Insurance
25 Disability benefits on May 20, 2011, alleging a disability onset date of March 5, 2009, which was
26 denied initially on September 22, 2011, and on reconsideration on April 27, 2012. (AR 17.)
27 Plaintiff did not appeal the prior adverse determination to a hearing before an ALJ. (AR 17.)

28 ² At the close of the hearing, the ALJ held the record open for 14 days to allow Plaintiff to
submit information regarding In-Home Support Services. (IHSS). (AR 17.)

³ At the hearing new evidence was submitted. (AR 17.)

2. Whether the ALJ erred in rejecting the opinions of Plaintiff's treating sources regarding her physical limitations.
3. Whether the ALJ erred in finding that Plaintiff has the ability to perform her past relevant work.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "more than a mere scintilla,' but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson, 402 U.S. at 401 (internal quotation marks and citation omitted).

This Court must review the record as a whole and consider adverse as well as supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where evidence is susceptible to more than one rational interpretation, the ALJ's decision must be upheld. Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999). "However, a reviewing court must consider the entire record as a whole and may not affirm simply by isolating a 'specific quantum of supporting evidence.'" Robbins, 466 F.3d at 882 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495 F.3d 625, 630 (9th Cir. 2007).

THE SEQUENTIAL EVALUATION

The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or . . . can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has

1 established a five-step sequential process to determine whether a claimant is disabled. 20
2 C.F.R. §§ 404.1520, 416.920.

3 The first step is to determine whether the claimant is presently engaging in substantial
4 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
5 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
6 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
7 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
8 significantly limit the claimant's ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must
9 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.
10 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment
11 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,
12 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the
13 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.
14 2001). Before making the step four determination, the ALJ first must determine the claimant's
15 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can
16 still do despite [his or her] limitations" and represents an assessment "based on all the relevant
17 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the
18 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),
19 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

20 If the claimant cannot perform his or her past relevant work or has no past relevant work,
21 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
22 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
23 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
24 consistent with the general rule that at all times the burden is on the claimant to establish his or
25 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
26 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
27 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
28 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence

1 demonstrating that other work exists in significant numbers in the national economy that the
2 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
3 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
4 entitled to benefits. Id.

5 **THE ALJ DECISION**

6 In this case, the ALJ determined at step one of the sequential process that Plaintiff did
7 not engage in substantial gainful activity during the period from her alleged onset date of March
8 9, 2009 through her date last insured of December 31, 2014. (AR 20.)

9 At step two, the ALJ determined that through the date last insured Plaintiff had the
10 following medically determinable severe impairments: hypophosphatemic rickets, also known
11 as x-linked hypophosphatemia (“XLH”); and bilateral femoral neck stress fractures, status-post
12 open reduction and internal fixation (“ORIF”). (AR 20.)

13 At step three, the ALJ determined that through the date last insured Plaintiff did not have
14 an impairment or combination of impairments that met or medically equaled the severity of one
15 of the listed impairments. (AR 20.)

16 The ALJ then found that through the date last insured Plaintiff had the residual
17 functional capacity to perform sedentary work as defined in 20 CFR § 404.1567(a), with the
18 following limitations:

19 [Claimant] needed the use of a cane for any ambulation and to change position
20 between standing and sitting once per hour for five or 10 minutes while remaining on
21 task. She could never push and/or pull with the lower extremities. She could
22 frequently reach in all directions, finger and feel. She could never climb ladders, ropes
23 or scaffolds; or crawl. She could occasionally climb ramps and stairs with the use of a
24 handrail, balance, stoop, kneel and crouch. She could never be exposed to
25 unprotected heights, moving mechanical parts, or extreme cold or heat, and she could
26 never walk on rough or uneven terrain. She could occasionally operate a motor vehicle
27 and occasionally be exposed to humidity, wetness, dusts, odors, fumes, pulmonary
28 irritants, and vibration.

1 (AR 21-25.) In determining the above RFC, the ALJ made an adverse credibility determination
2 that Plaintiff's subjective symptom allegations were "not entirely consistent" with the medical
3 evidence and other evidence of record. (AR 21.)

4 At step four, the ALJ found that through the date last insured Plaintiff was able to
5 perform her past relevant work as a legal secretary and medical office clerk. (AR 25-26.) The
6 ALJ also found that through the date last insured, considering the Claimant's age, education,
7 work experience, and RFC, there were jobs that existed in significant numbers in the national
8 economy that the Claimant could have performed such as the jobs of insurance clerk,
9 receptionist, and appointment clerk. (AR 26-27.)

10 Consequently, the ALJ found that Claimant was not disabled, within the meaning of the
11 Social Security Act at any time from March 9, 2009, the alleged onset date, through December
12 31, 2014, the date last insured. (AR 27-28.)

13 **DISCUSSION**

14 The ALJ decision must be affirmed. The ALJ properly considered the medical evidence
15 and properly discounted Plaintiff's subjective symptom allegations. The ALJ's RFC is supported
16 by substantial evidence.

17 **I. THE ALJ PROPERLY CONSIDERED THE MEDICAL EVIDENCE**

18 Plaintiff contends that the ALJ improperly discounted the opinions of Plaintiff's treating
19 sources regarding her physical limitations. The Court disagrees.

20 **A. Relevant Federal Law**

21 The ALJ's RFC is not a medical determination but an administrative finding or legal
22 decision reserved to the Commissioner based on consideration of all the relevant evidence,
23 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20
24 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence
25 in the record, including medical records, lay evidence, and the effects of symptoms, including
26 pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.

27 In evaluating medical opinions, the case law and regulations distinguish among the
28 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)

1 those who examine but do not treat the claimant (examining physicians); and (3) those who
2 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20
3 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In
4 general, an ALJ must accord special weight to a treating physician’s opinion because a treating
5 physician “is employed to cure and has a greater opportunity to know and observe the patient
6 as an individual.” Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If
7 a treating source’s opinion on the issues of the nature and severity of a claimant’s impairments
8 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is
9 not inconsistent with other substantial evidence in the case record, the ALJ must give it
10 “controlling weight.” 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

11 Where a treating doctor’s opinion is not contradicted by another doctor, it may be
12 rejected only for “clear and convincing” reasons. Lester, 81 F.3d at 830. However, if the
13 treating physician’s opinion is contradicted by another doctor, such as an examining physician,
14 the ALJ may reject the treating physician’s opinion by providing specific, legitimate reasons,
15 supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495
16 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating
17 physician's opinion is contradicted by an examining professional’s opinion, the Commissioner
18 may resolve the conflict by relying on the examining physician’s opinion if the examining
19 physician’s opinion is supported by different, independent clinical findings. See Andrews v.
20 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an
21 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing
22 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician’s
23 opinion is contradicted by another physician’s opinion, an ALJ must provide specific and
24 legitimate reasons to reject it. Id. However, “[t]he opinion of a non-examining physician cannot
25 by itself constitute substantial evidence that justifies the rejection of the opinion of either an
26 examining physician or a treating physician”; such an opinion may serve as substantial
27 evidence only when it is consistent with and supported by other independent evidence in the
28 record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

1 **B. Analysis**

2 After a fall in 2009, Plaintiff was diagnosed with hypophosphatemic rickets also known
3 as x-linked hypophosphatemia ("XLH"), a congenital genetic condition affecting the bones,
4 particularly the hips. (AR 21, 22.) She underwent bilateral hip open reduction and internal
5 fixation surgery ("ORIF"). (AR 22.) She claims she is unable to work because of constant pain
6 and discomfort from her XLH and repaired hip fractures. (AR 21.) She claims she can stand
7 and walk only 5 minutes before sitting down and needs a cane to walk. (AR 21.)

8 The ALJ, however, determined that Plaintiff could perform a reduced range of sedentary
9 work. (AR 21.) The record indicates Plaintiff responded well to the 2009 hip surgery, reporting
10 resolved symptoms soon after. (AR 22.) Radiographs in August 2009 demonstrated near
11 complete healing on the left side and interval healing on the right. (AR 22.) By March 2010,
12 her orthopedic surgeon found her hips were doing well. (AR 22.) She was given exercises to
13 do. (AR 22.)

14 Claimant's symptoms have remained stable, and she has received only routine care and
15 chiropractic adjustments. (AR 22.) In November 2011 she injured her foot on a trip to Mexico,
16 but on physical examination had flexion and extension of lower extremities despite pain. (AR
17 22.) She subsequently complained of hip pain, but X-rays showed no evidence of fracture.
18 (AR 22.) Findings at consultative examinations indicated no significant deterioration in her
19 condition. (AR 22.) In November 2014, her physician recommended diet, exercise, and
20 medication. (AR 24.) She admitted that her joint pain was controlled with medication and that
21 she had a "very active life." (AR 23, 486.) The ALJ found no evidence of recent imaging of the
22 Claimant's bones and systems, significant episodes of exacerbations of symptoms, or
23 enhanced or more intensive recent medical treatment that would indicate a substantial
24 deterioration in Claimant's condition since the April 27, 2012 adverse determination of her prior
25 concurrent claim and her December 31, 2014 date last insured. (AR 23-24.)

26 In determining that Plaintiff could perform a reduced range of sedentary work, the ALJ
27 gave "great weight" to the November 3, 2015 opinion of the consulting orthopedist Dr. Richard
28 Pollis. (AR 24, 55, 564.) Plaintiff presented in no acute distress, but reported hip and low back

1 pain and that she can stand or walk no more than 10 minutes at a time and must change
2 position after sitting one hour. (AR 551, 552.) Nonetheless, Dr. Pollis found that Plaintiff could
3 lift and carry 10 pounds occasionally, stand and walk two hours in an 8 hour workday with use
4 of a cane, and sit 6 hours in an 8 hour workday. (AR 555.) She has no manipulative, visual,
5 communicative, or environmental limitations. (AR 555.) The ALJ added a sit/stand option once
6 per hour for five minutes. (AR 24.)

7 The ALJ also gave substantial weight to the consulting internist, Dr. Sohail Afra who
8 assessed a light work RFC. (AR 24, 446-451.) Dr. Afra found Plaintiff was able to walk without
9 her cane but with a mildly antalgic gait. (AR 450.) Dr. Afra opined Plaintiff could carry 20
10 pounds occasionally and walk or stand 4 hours in an 8 hour workday, and could benefit from
11 use of a cane. (AR 451.) Dr. Afra found Plaintiff can sit 6 hours in an 8 hour workday, and has
12 no restrictions on use of the hands for fine and gross manipulative movements. (AR 451.) The
13 ALJ also gave substantial weight to the State agency physician reviewer who assessed a light
14 work RFC. (AR 24, 143-145.)

15 Plaintiff contends that the ALJ erred in discounting the opinion of her treating physician,
16 Dr. Gerald Michaelson. In a December 2013 Physical Residual Functional Capacity
17 Questionnaire, Dr. Michaelson opined Plaintiff was limited to lifting and carrying 10 pounds
18 occasionally, standing and walking less than 2 hours in an eight hour workday and sitting less
19 than 6 hours in a workday, and would be absent from work every day. (AR 24, 514.) The ALJ
20 discounted Dr. Michaelson's opinion, particularly in regard to missing work every day, because
21 the medical evidence, including the doctor's own treating notes, does not fully support the
22 limitations he assessed. (AR 24.) An ALJ may reject a treating physician's opinion that does
23 not have supportive evidence, is contradicted by other assessments, is unsupported by the
24 record, and is unsupported by or inconsistent with his or her treatment notes. Batson v.
25 Comm'r, 359 F.3d 1190, 1995 & n.3 (9th Cir. 2004); Bayliss, 427 F.3d at 1216. Here,
26 Dr. Michaelson's progress note, dated December 9, 2013, contains Plaintiff's statement that
27 she leads a "very active life." (AR 23, 486.) An ALJ may reject a physician's opinion that is
28 contradicted by a claimant's own admitted or observed abilities. Bayliss, 427 F.3d at 1216.

1 The ALJ specifically found that Dr. Michaelson’s opinion that Claimant cannot even do
2 sedentary work is contradicted by his office’s advice that the Claimant walk, exercise, and be
3 physically active. (AR 24, 524, 533.) In November 2014, Dr. Michaelson noted that Claimant
4 remained functional on her medication and was trying to maintain her activity level and
5 exercise. (AR 24, 537.) She had “discomfort with simple walking,” which hardly bespeaks total
6 disability, and Dr. Michaelson gave these instructions: “You are doing well, continue your
7 current diet, exercise and medication program.” (AR 24, 538.) The ALJ also noted that Dr.
8 Michaelson’s opinion was contradicted by the medical evidence, which would include the
9 objective medical evidence and the contradictory opinions of other physicians such as Dr.
10 Pollis. The contradictory opinions of other physicians provide specific, legitimate reasons for
11 rejecting a physician’s opinion. Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001):
12 Batson, 359 F.3d at 1195. The ALJ gave specific legitimate reasons supported by substantial
13 evidence for discounting the opinion of Dr. Michaelson.

14 The ALJ also gave little weight to a March 2016 letter from Dr. Frederick Singer who
15 stated “[i]t was extremely unlikely that this unfortunate woman could have a desk job.” (AR 25,
16 565.) The ALJ rejected Dr. Singer’s opinion because it was based on a single office visit well
17 after the December 31, 2014 date last insured. (AR 25.) The ALJ also found Dr. Singer’s
18 opinion “conclusory and speculative, uncritically accepting of the claimant’s subjective reports
19 and fails to assess the claimant’s functional level objectively and with detailed examination
20 findings, such as those made by the consultative orthopedist.” (AR 25.) An ALJ may reject
21 treating physician opinions that are “conclusory, brief and unsupported by the record as a
22 whole . . . or by objective medical findings.” Batson, 359 F.3d at 1195. Also, the ALJ
23 discounted Plaintiff’s subjective symptoms, as discussed below. A treating physician’s opinion
24 based on subjective complaints of a claimant whose credibility has been discounted can be
25 properly disregarded. Tonapetyan, 242 F.3d at 1149. The ALJ gave specific, legitimate
26 reasons based on substantial evidence for discounting Dr. Singer’s opinion.

27 The ALJ gave little weight to the opinion of Claimant’s chiropractor, Dr. Susan Benedict.
28 (AR 25.) She opined Plaintiff could not lift any weight at all, could stand and walk only 5

1 minutes in an 8 hour workday, and could sit only 30 minutes in a workday. (AR 25, 489-492.)
2 The ALJ found Dr. Benedict's assessment extreme on its face and inconsistent with other
3 medical evidence, other medical opinions, and Claimant's admitted activities. (AR 25.) Dr.
4 Benedict is not an acceptable medical source but an "other source" under § 404.1513(d). An
5 ALJ may discount the opinions of other sources for germane reasons. Molina v. Astrue, 674
6 F.3d 1104, 1111 (9th Cir. 2012). Inconsistency with the medical evidence is a germane reason
7 for discounting such testimony. Bayliss, 427 F.3d at 1218.

8 Plaintiff challenges the ALJ's treatment of the medical evidence, but it is the
9 responsibility of the ALJ to resolve conflicts in the medical evidence and ambiguities in the
10 record. Andrews, 53 F.3d at 1039. Where the ALJ's interpretation of the record is reasonable,
11 as it is here, it should not be second-guessed. Rollins v. Massanari, 261 F.3d 853, 857 (9th
12 Cir. 2001).

13 The ALJ discounted the opinions of Dr. Michaelson, Dr. Singer, and Dr. Benedict for
14 specific, legitimate reasons supported by substantial evidence. The ALJ properly considered
15 the medical evidence.

16 **II. THE ALJ PROPERLY DISCOUNTED PLAINTIFF'S SUBJECTIVE SYMPTOMS**

17 Plaintiff contends that the ALJ improperly discounted her subjective symptom
18 allegations. The Court disagrees.

19 **A. Relevant Federal Law**

20 The test for deciding whether to accept a claimant's subjective symptom testimony turns
21 on whether the claimant produces medical evidence of an impairment that reasonably could be
22 expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947 F.2d 341,
23 346 (9th Cir. 1991); see also Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998); Smolen, 80
24 F.3d at 1281-82 esp. n.2. The Commissioner may not discredit a claimant's testimony on the
25 severity of symptoms merely because they are unsupported by objective medical evidence.
26 Reddick, 157 F.3d at 722; Bunnell, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain
27 testimony not credible, the ALJ "must specifically make findings which support this conclusion."
28 Bunnell, 947 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the

1 court to conclude that the ALJ did not arbitrarily discredit claimant's testimony." Thomas v.
2 Bernhart, 278 F.3d at 958; see also Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001);
3 Bunnell, 947 F.2d at 345-46. Unless there is evidence of malingering, the ALJ can reject the
4 claimant's testimony about the severity of a claimant's symptoms only by offering "specific,
5 clear and convincing reasons for doing so." Smolen, 80 F.3d at 1283-84; see also Reddick,
6 157 F.3d at 722.

7 **B. Analysis**

8 In determining Plaintiff's RFC the ALJ concluded that Plaintiff's medically determinable
9 impairments reasonably could be expected to cause Plaintiff's alleged symptoms. (AR 21.)
10 The ALJ, however, also found that Plaintiff's statements regarding the intensity, persistence
11 and limiting effects of these symptoms are "not entirely consistent" with the medical evidence
12 and other evidence in the record. (AR 21.) Because the ALJ did not make any finding of
13 malingering, he was required to provide clear and convincing reasons supported by substantial
14 evidence for discounting Plaintiff's credibility. Smolen, 80 F.3d at 1283-84; Tommasetti v.
15 Astrue, 533 F.3d 1035, 1039-40 (9th Cir. 2008). The ALJ did so.

16 First, the ALJ found that Plaintiff's subjective symptom allegations were inconsistent with
17 the medical evidence. (AR 21, 25.) An ALJ is permitted to consider whether there is a lack of
18 medical evidence to corroborate a claimant's alleged symptoms so long as it is not the only
19 reason for discounting a claimant's credibility. Burch v. Barnhart, 400 F.3d 676, 680-81 (9th
20 Cir. 2005). Here, the medical evidence as discussed above supports the ALJ's RFC for a
21 restricted range of sedentary work. Dr. Pollis, Dr. Afra, and the State agency physician
22 reviewer all assessed RFCs that establish that Plaintiff is capable of at least sedentary work.

23 Second, the ALJ found that Plaintiff has received only routine, conservative care. (AR
24 22.) An ALJ may consider conservative treatment in evaluating credibility. Tommasetti, 533
25 F.3d at 1039. As already noted, Plaintiff's symptoms appeared stable following her 2009 hip
26 surgery (AR 22), with conservative treatment for her joint pain consisting of diet, exercise, and
27 medication. (AR 24.) Plaintiff admitted her joint pain was controlled with prescribed
28 medication. (AR 23.) She claims her medication causes lethargy (AR 22), but her physician

1 Dr. Michaelson indicated she was functional on her medication. (AR 24, 537.) Impairments
2 and limitations that can be controlled with medication are not disabling. Warre v. Comm'r of
3 Soc. Sec., 439 F.3d 1001, 1006 (9th Cir. 2006). Also, there was no evidence of enhanced or
4 more intensive medical treatment that would tend to show a deterioration in her condition
5 through the date last insured of December 31, 2014. (AR 22-23.) Progress notes indicated no
6 changes in her treatment plan. (AR 23.)

7 Third, the ALJ found that Plaintiff's daily activities were inconsistent with disabling
8 limitations, which is a legitimate consideration in evaluating credibility. Bunnell, 947 F.2d at
9 345-46. The ALJ found that Plaintiff could independently walk to her car, drive, and perform
10 her activities of daily living with a cane to assist in ambulation. (AR 20.) She can drive her car
11 up to an hour at a time. (AR 23.) She attempted to launch her own at-home internet logo
12 business in 2014. (AR 23.) She took a trip to Mexico in 2011 (AR 22) and traveled to New
13 Orleans to attend and participate in her sister's wedding. (AR 25.) Plaintiff stated in an
14 Exertion Questionnaire that she spent most of the day reclining or lying down, but she reported
15 to her doctor in 2013 that she had a "very active life." (AR 23, 266, 486, 487.) An ALJ may
16 consider inconsistencies between a claimant's statements and other statements and conduct in
17 evaluating credibility. Light v. Social Sec. Adm., 119 F.3d 789, 792 (9th Cir. 1997); Thomas,
18 278 F.3d at 958-59. Plaintiff contends that her daily activities do not prove she can work, but
19 they do suggest that Claimant has greater functional abilities than she alleges. See Valentine
20 v. Comm'r, 574 F.3d 685, 694 (9th Cir. 2009).

21 Plaintiff challenges the ALJ's credibility finding, but again it is the ALJ's responsibility to
22 resolve ambiguities in the record. Andrews, 53 F.3d at 1039. Where the ALJ's interpretation of
23 the record is reasonable, as it is here, it should not be second-guessed. Rollins, 261 F.3d at
24 857.

25 The ALJ discounted Plaintiff's subjective symptom allegations for clear and convincing
26 reasons supported by substantial evidence. The ALJ's RFC is supported by substantial
27 evidence.

1 **III. THE ALJ'S PAST RELEVANT WORK DETERMINATION IS**
2 **SUPPORTED BY SUBSTANTIAL EVIDENCE**

3 The ALJ determined, based on the vocational expert's testimony, that Plaintiff could
4 perform her past relevant work as a legal secretary or medical office clerk. (AR 25-27.)
5 Plaintiff contends that the ALJ's hypothetical question to the vocational expert did not reflect all
6 of Plaintiff's physical limitations because it did not properly credit the medical opinions in the
7 record or Plaintiff's testimony. Plaintiff is rearguing the issues discussed above. The ALJ
8 properly included in his hypothetical to the VE and in Plaintiff's RFC all limitations supported by
9 the record and contained in the RFC and was not required to include limitations properly
10 rejected. Batson, 359 F.3d at 1197; Bayliss, 427 F.3d at 1217.

11 * * *

12 The ALJ's nondisability determination is supported by substantial evidence and free of
13 legal error.

14 **ORDER**

15 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the
16 Commissioner of Social Security and dismissing this case with prejudice.

17 DATED: July 31, 2018

18 /s/ John E. McDermott
19 JOHN E. MCDERMOTT
20 UNITED STATES MAGISTRATE JUDGE
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