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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

ANA E.D.¹,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner
of Social Security,

Defendant.

Case No. CV 20-4739-AS

MEMORANDUM OPINION

For the reasons discussed below, IT IS HEREBY ORDERED that, pursuant to Sentence Four of 42 U.S.C. § 405(g), the Commissioner's decision is affirmed.

¹ Plaintiff's name is partially redacted in accordance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 **PROCEEDINGS**

2
3 On May 28, 2020, Plaintiff filed a Complaint seeking review
4 of the Commissioner's denial of Plaintiff's application for a
5 period of disability and disability insurance benefits ("DIB")
6 under Title II of the Social Security Act. (Dkt. No. 1). On
7 October 26, 2020, Defendant filed an Answer and the Administrative
8 Record ("AR"). (Dkt. Nos. 16-17). The parties have consented to
9 proceed before a United States Magistrate Judge. (Dkt. Nos. 10-
10 12). On March 25, 2021, the parties filed a Joint Stipulation
11 ("Joint Stip.") setting forth their respective positions regarding
12 Plaintiff's claims. (Dkt. No. 24).

13
14 The Court has taken this matter under submission without oral
15 argument. See C.D. Cal. C. R. 7-15.

16
17 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

18
19 On August 12, 2015, Plaintiff, previously employed as a
20 waitress and home attendant (see AR 40, 62, 308), protectively
21 filed her DIB application alleging disability since October 24,
22 2012. (AR 285-87). Plaintiff's application was denied initially
23 on January 12, 2016 (AR 171-75), and upon reconsideration on May
24 25, 2016 (AR 177-82).

25
26 On January 25, 2018, Administrative Law Judge ("ALJ") James
27 D. Goodman heard testimony from Plaintiff, who was represented by
28 counsel. (AR 54-93). Afterward, the ALJ requested that Plaintiff

1 attend consultative psychological and orthopedic examinations,
2 which took place on March 14 and March 21, 2018, respectively. (AR
3 2900-08, 2903-13). The ALJ then convened a second hearing on July
4 24, 2018, and indicated his intention to propound interrogatories
5 on a vocational expert. (AR 50-53). Neither Plaintiff nor her
6 counsel appeared at the July 24 hearing. (AR 52).

7
8 On September 25, 2018, the ALJ held a third hearing, with
9 Plaintiff and her counsel in attendance. (AR 94-102). The ALJ
10 determined that a medical expert's opinion was needed for the ALJ
11 to make a disability determination regarding the relevant period
12 between Plaintiff's alleged onset date of October 24, 2012, and
13 her last insured date of December 31, 2013. (AR 101-02). Thus,
14 after the hearing, medical interrogatories and cross-
15 interrogatories were propounded on orthopedic medical expert Dr.
16 Peter Schosheim, M.D. (AR 4403-07, 4373-88, 4389-4402, 4408-10,
17 4412-14). After that, vocational interrogatories and cross-
18 interrogatories were propounded on vocational expert Gregory Jones
19 (AR 454-67, 468-75, 478-83, 484-86, 487-89).

20
21 On May 13, 2019, the ALJ issued a decision denying Plaintiff's
22 application. (AR 12-49). The ALJ applied the requisite five-step
23 process to evaluate Plaintiff's case. At step one, the ALJ found
24 that Plaintiff had not engaged in substantial gainful activity
25 between her alleged onset date of October 24, 2012, and her last
26 insured date of December 31, 2013. (AR 24). At step two, the ALJ
27 found that Plaintiff had the following severe impairments:
28 degenerative disc disease of the cervical spine, status post

1 anterior cervical fusion with internal fixation on January 11,
2 2013; degenerative disc disease of the lumbar spine; fibromyalgia;
3 and obesity. (AR 25). At step three, the ALJ determined that
4 Plaintiff's impairments did not meet or equal a listing found in
5 20 C.F.R. Part 404, Subpart P, Appendix 1. (AR 28). Next, the
6 ALJ found that Plaintiff had the following Residual Functional
7 Capacity ("RFC"):²

8
9 [Plaintiff could] perform light work as defined in 20
10 CFR 404.1567(b) [³] except that she could lift and carry
11 up to twenty (20) pounds occasionally and ten (10) pounds
12 frequently; could stand up to two (2) hours and walk up
13 to two (2) hours and sit for six (6) hours cumulatively
14 in an eight-hour day; could occasionally stoop, crawl,
15 kneel, crouch, and bend, but could never climb ramps,
16 ladders, ropes, or scaffolds; could frequently handle,
17 finger, and reach above shoulder level with the left and
18 right upper extremities; could have occasional exposure
19 to excessive heat and cold but could never have exposure
20 to vibrating surfaces; could have occasional exposure to
21 moving mechanical parts; and could never work at
22 dangerous heights or around possible electric shock.

23
24 _____
25 ² A Residual Functional Capacity is what a claimant can
26 still do despite existing exertional and nonexertional limitations.
27 See 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

28 ³ "Light work involves lifting no more than 20 pounds at a
time with frequent lifting or carrying of objects weighing up to
10 pounds." 20 C.F.R. §§ 404.1567(b), 416.967(b).

1 (AR 30-31).

2

3 At step four, the ALJ found that Plaintiff was unable to
4 perform her past relevant work as a waitress or home attendant.
5 (AR 39-40). At step five, based on Plaintiff's RFC, age, education,
6 work experience, and the vocational expert's interrogatory
7 responses, the ALJ determined that there were jobs that existed in
8 significant numbers in the national economy that Plaintiff could
9 perform, including electronics worker, production assembler, and
10 bench assembler. (AR 41-42). Accordingly, the ALJ concluded that
11 Plaintiff was not disabled. (AR 43).

12

13 On July 25, 2019, the Appeals Council denied Plaintiff's
14 request to review the ALJ's decision. (AR 1-3). Plaintiff now
15 seeks judicial review of the ALJ's decision, which stands as the
16 final decision of the Commissioner. See 42 U.S.C. § 405(g).

17

18

STANDARD OF REVIEW

19

20 This Court reviews the Administration's decision to determine
21 if it is free of legal error and supported by substantial evidence.
22 See Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012).
23 "Substantial evidence" is more than a mere scintilla, but less than
24 a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir.
25 2014). To determine whether substantial evidence supports a
26 finding, "a court must consider the record as a whole, weighing
27 both evidence that supports and evidence that detracts from the
28 [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033,

1 1035 (9th Cir. 2001) (internal quotation omitted). As a result,
2 “[i]f the evidence can support either affirming or reversing the
3 ALJ’s conclusion, [a court] may not substitute [its] judgment for
4 that of the ALJ.” Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882
5 (9th Cir. 2006).

7 DISCUSSION

8
9 Plaintiff claims that the ALJ erred in (1) rejecting part of
10 the medical expert’s opinion; (2) rejecting Plaintiff’s testimony;
11 and (3) relying on the vocational expert’s response to conclude at
12 step five that Plaintiff had the ability to perform jobs existing
13 in significant numbers in the national economy. (See Joint Stip.
14 at 3-37). After consideration of the record as a whole, the Court
15 finds that the Commissioner’s findings are supported by substantial
16 evidence and are free from material legal error.⁴

17 18 **A. The ALJ Properly Rejected Part of the Medical Expert’s Opinion**

19 20 **1. Pertinent Facts**

21
22 After the hearing on September 25, 2018, as noted above, the
23 ALJ sought the opinion of a medical expert to review the evidence
24 of record and assess Plaintiff’s functional limitations for the

25 ⁴ The harmless error rule applies to the review of
26 administrative decisions regarding disability. See McLeod v.
27 Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart,
28 400 F.3d 676, 679 (9th Cir. 2005) (an ALJ’s decision will not be
reversed for errors that are harmless).

1 relevant period between Plaintiff's alleged onset date of October
2 24, 2012, and her last insured date of December 31, 2013. (See AR
3 101-02). To that end, on December 4, 2018, the ALJ propounded
4 interrogatories on orthopedic specialist Dr. Peter Schosheim, M.D.
5 (AR 4373-87).

6
7 In response to the ALJ's interrogatories, Dr. Schosheim
8 opined, among other things, that during the relevant period
9 Plaintiff was limited to standing or walking for two hours and
10 sitting for six hours in an eight-hour workday; lifting or carrying
11 ten pounds occasionally and twenty pounds frequently;⁵ occasionally
12 climbing, balancing, stooping, kneeling, crouching, or crawling;
13 and frequently reaching, handling, or fingering. (AR 4398-99).
14 When asked if there were "any other limitations or restrictions[]
15 on [Plaintiff's] ability to do basic work activities established
16 by the records as a whole," Dr. Schosheim responded "[n]o." (AR
17 4400). When asked to indicate "the effect of [Plaintiff's] medical
18 treatment alone, specifically including the use of any medications,
19 on [Plaintiff's] ability to engage in work-related activities,"
20 Dr. Schosheim responded that there were no such effects, while
21 noting that "[s]ome [medications] cause Drowsiness," but this was
22 "not mentioned as symptom by treaters." (AR 4400).

23
24 Plaintiff's counsel then submitted cross-interrogatories.
25 (AR 4408-09). These asked, among other things: "Could

26
27 ⁵ Dr. Schosheim presumably meant the reverse - i.e., ten
28 pounds frequently and twenty pounds occasionally.

1 [Plaintiff's] medical impairments reasonably cause her to be off
2 task during a regular 8-hour workday?" (AR 4409). In response to
3 this question, Dr. Schosheim wrote: "May be off task up to 2
4 [hours]/day out of 8 [hours] due to loss of concentration [and]
5 pace [and] Drowsiness from multiple prescribed meds." (AR 4413).
6 Plaintiff's cross-interrogatories also asked: "Could [Plaintiff's]
7 medical impairments reasonably result in exacerbations of symptoms
8 that would cause her to miss days off work?" (AR 4409). Dr.
9 Schosheim responded: "~3-5 Days/Month [due to] Fibromyalgia [and]
10 post Cervical laminectomy syndrome." (AR 4413).

11
12 The ALJ, reviewing the medical evidence in the decision, gave
13 great weight to the opinion Dr. Schosheim provided in response to
14 the ALJ's interrogatories. (AR 35-36). The ALJ's RFC finding
15 largely adopted Dr. Schosheim's assessment of Plaintiff's
16 limitations. (See AR 30-31, 4398-99). The ALJ found that Dr.
17 Schosheim was a well-qualified medical expert who had access to
18 the fully-developed medical record. (AR 35). The ALJ also found
19 that Dr. Schosheim's opinion of Plaintiff's limitations was
20 "generally consistent with the overall record, including the
21 comparatively modest objective evidence" and Plaintiff's "largely
22 conservative treatment records." (AR 35-36).

23
24 However, the ALJ determined that no further limitations were
25 warranted based on Dr. Schosheim's responses to Plaintiff's cross-
26 interrogatories, including Dr. Schosheim's statements that
27 Plaintiff "[m]ay be off task" for up to two hours a day due to a
28 loss of concentration or to drowsiness from medications," and that

1 Plaintiff could miss about "3-5 Days/Month [due to] Fibromyalgia
2 [and] post Cervical laminectomy syndrome." (AR 36, 4413). The
3 ALJ gave the following explanation for rejecting these additional
4 assessments:

5
6 [Dr. Schosheim] never alluded to such "off task" or work
7 absence limitations in his initial responses to my
8 interrogatories, in which [Dr. Schosheim] explicitly
9 stated that he was "only discuss[ing] impairments
10 starting [on] 10-24-12 [and continuing through] 12-31-
11 13," and explicitly stated that there were not "any other
12 limitations or restrictions[] on [Plaintiff's] ability
13 to do basic work activities established by the records
14 as a whole," aside from those noted in the functional
15 assessment he provided therein. In other words, Dr.
16 Schosheim did not assess "off task" or work absence
17 limitations in the functional assessment he provided in
18 response to my interrogatories, which assessment I find
19 to be generally consistent with the overall evidence,
20 for reasons explained herein. Indeed, I find it
21 significant that Dr. Schosheim went out of his way to
22 note, in response to my interrogatories, that although
23 "some med[icaton]s cause drowsiness[,] [that issue was]
24 not mentioned as [a] symptom by treaters." Accordingly,
25 while [Plaintiff's counsel] may wish to argue that Dr.
26 Schosheim, in response to [Plaintiff's counsel's] own
27 interrogatories, amended his opinion in a way that
28 favors [Plaintiff], given that he suggested, among other

1 points, that [Plaintiff] "may be off task up to 2
2 hours/day out of 8 hours due to [a] loss of concentration
3 [and] pace [and] drowsiness from multiple prescribed
4 medications," this later opinion is at odds with Dr.
5 Schosheim's own review of the record. In fact, the
6 specific pages of evidence to which Dr. Schosheim
7 referred as support for his later-expressed opinion that
8 [Plaintiff's] medications "would effect [sic] [her]
9 ability to work 5 days/week [and] 8 h[ou]rs/day" . . .
10 say no such thing. Moreover, Dr. Schosheim provided no
11 specific citations to evidence supporting his response
12 to [Plaintiff's counsel's] interrogatory regarding "days
13 off work," which, in addition to other reasons discussed
14 above, leaves me disinclined to accept Dr. Schosheim's
15 later-expressed assessment. In short, Dr. Schosheim's
16 later-expressed opinions were solicited by [Plaintiff's]
17 attorney in a carefully calculated way that, while I may
18 commend [Plaintiff's counsel] for her zealous efforts on
19 behalf of [Plaintiff], frankly renders them much less
20 reliable than his initial assessment and more open to
21 attack. In contrast, [Dr. Schosheim's] initial
22 assessment, as explained herein, survives any such
23 attack; it not only represents the more unbiased
24 opinion, it is also better supported and more consistent
25 with the overall evidence and therefore entitled to
26 greater weight.

27
28 (AR 36) (record citations omitted).

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2. Applicable Law

Social Security regulations require the Agency to “evaluate every medical opinion” that it receives. 20 C.F.R. § 404.1527(c). An ALJ may reject the medical opinions of examining physicians or non-examining physicians (including non-examining medical experts) only by providing specific and legitimate reasons supported by substantial evidence. See Murphy v. Comm’r of Soc. Sec. Admin., 423 F. App’x 703, 705 (9th Cir. 2011) (citing Lester v. Chater, 81 F.3d 821, 830-31 (9th Cir. 1995)); Mark D. v. Comm’r of Soc. Sec., 2018 WL 6804319, at *6 (W.D. Wash. Dec. 27, 2018) (“An ALJ must still give specific and legitimate reasons to reject a non-examining doctor’s opinion, or significant parts of it.”) (citing Shafer v. Astrue, 518 F.3d 1067, 1069-70 (9th Cir. 2008)). An ALJ may provide “substantial evidence” for rejecting a medical opinion by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” Garrison, 759 F.3d at 1012 (citing Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998)) (quotation marks omitted).

3. Analysis

Plaintiff contends that the ALJ failed to provide adequate reasons to reject Dr. Schosheim’s opinion in response to Plaintiff’s cross-interrogatories - specifically, the limitations of being off-task up to two hours a day and missing work 3-5 days a month. (Joint Stip. at 9-11). However, the ALJ properly rejected

1 Dr. Schosheim's later responses by providing several specific and
2 legitimate reasons. Among these reasons, the ALJ reasonably found
3 that the later responses were less reliable because they
4 contradicted Dr. Schosheim's initial responses, and seemed to have
5 been solicited by the "carefully calculated" questions of
6 Plaintiff's counsel. (AR 36). The ALJ also reasonably concluded
7 that the later responses did not warrant great weight because they
8 were not supported with citations to the record and were less
9 consistent with the objective evidence in the record. (AR 36).
10 Plaintiff's contentions fail to demonstrate otherwise.

11
12 Plaintiff disputes the ALJ's remark that Dr. Schosheim's later
13 responses were unreliable because Plaintiff's counsel's cross-
14 interrogatories were "carefully calculated." (Joint Stip. at 9).
15 As noted above, these cross-interrogatories included the following
16 questions:

17
18 4. Could [Plaintiff's] medical impairments reasonably
19 cause her to be off task during a regular 8-hour
20 workday?

21
22 5. Could [Plaintiff's] medical impairments reasonably
23 result in exacerbations of symptoms that would cause her
24 to miss days off work?

25
26 (AR 4409) (emphasis added). Because these questions ask whether
27 Plaintiff's impairments could have certain consequences (i.e.,
28 being absent or off-task), Dr. Schosheim's affirmative responses

1 may reasonably be interpreted to mean that such consequences are
2 merely possible, even if unlikely. Indeed, the wording of Dr.
3 Schosheim's response to question 4 - that Plaintiff "may be off
4 task up to 2 hours/day . . . ," as the ALJ himself emphasized (see
5 AR 36, 4413) - supports this interpretation. It was therefore
6 reasonable for the ALJ to construe the responses as unreliable in
7 light of the wording of these questions.

8
9 The ALJ also reasonably determined that Dr. Schosheim's
10 responses to the later questions conflicted with his responses to
11 the initial questions. (AR 36). As the ALJ correctly pointed out,
12 Dr. Schosheim "never alluded to such 'off task' or work absence
13 limitations in his initial responses to [the ALJ's]
14 interrogatories." (AR 36). Dr. Schosheim instead indicated in
15 his initial responses that there were not "any other limitations
16 or restrictions[] on [Plaintiff's] ability to do basic work
17 activities established by the records as a whole," and also that
18 no further limitations were attributable to Plaintiff's
19 medications. (See AR 36, 4400). On the latter point, the ALJ
20 reasonably found it "significant that Dr. Schosheim went out of
21 his way to note, in response to [the ALJ's] interrogatories, that
22 although 'some med[icaton]s cause drowsiness[,] [that issue was]
23 not mentioned as [a] symptom by treaters.'" (AR 36) (quoting AR
24 4400). These statements from Dr. Schosheim certainly do seem to
25 conflict, to some extent, with his later statement that Plaintiff
26 "[m]ay be off task up to 2 [hours]/day out of 8 [hours] due to loss
27 of concentration [and] pace [and] Drowsiness from multiple
28 prescribed meds." (AR 4413) (emphasis added).

1 Plaintiff also disputes the ALJ's finding that Dr. Schosheim's
2 initial interrogatory responses were more consistent with the
3 medical evidence than were his later responses to the counter-
4 interrogatories. (Joint Stip. at 10). Plaintiff particularly
5 takes issue with the ALJ's characterization of the objective
6 medical evidence as "comparatively modest," and of Plaintiff's
7 treatment as "largely conservative." (Joint Stip. at 10; see AR
8 35-36). However, the ALJ provided a specific and detailed
9 evaluation of the medical evidence to support these findings. For
10 example, the ALJ noted that many of the imaging studies in the
11 record "explicitly refer to findings that are only mild or moderate
12 at most." (AR 33) (citing AR 510-11, 1487-88, 1496, 1499, 1502,
13 1507).⁶ The ALJ also noted Plaintiff's "often fairly unremarkable
14 physical exam findings," particularly with respect to fibromyalgia,
15 about which the ALJ was "frankly unable to find clear documentation
16 of specific numbers and locations of relevant tenderpoint findings
17 in the period at issue." (AR 29, 33) (citing, e.g., AR 511-12,
18 652, 663, 695, 760, 786). The ALJ also discussed and cited record
19 evidence indicating that, aside from some injections and a 2013
20 surgery, Plaintiff's symptoms were "generally managed with largely
21 conservative treatment measures[,] such as medications, routine
22 follow-up appointments, and the like," and these measures,
23 including the injections and surgery, did "yield some (albeit

24
25 ⁶ While the ALJ's citations refer to the pages as numbered
26 within the individual exhibits compiled in the record, this Order
27 refers to the corresponding page numbers of the Administrative
28 Record. For example, where the ALJ here cites pages 3-4 of Exhibit
B2F, the Court refers to these same pages by their corresponding
Administrative Record page numbers, AR 510-11.

1 reportedly not total) relief.” (AR 37-38) (citing AR 508-09, 578,
2 649, 691-92, 756-57, 1811, 1904, 2885-86). Even if the evidence
3 may be susceptible to different views, the ALJ’s findings on this
4 issue are reasonable and supported by substantial evidence.

5
6 In addition, the ALJ reasonably found that the lack of record
7 citations in Dr. Schosheim’s later responses also made them less
8 reliable. The only two pages that Dr. Schosheim cited in the later
9 responses contain little more than lists of Plaintiff’s diagnoses
10 and prescriptions. (See AR 599, 634, 4412). As the ALJ pointed
11 out, these cited pages do not reflect any limitations resulting
12 from Plaintiff’s medications, nor do they suggest any further
13 limitations from her conditions. (See AR 36, 599, 634).

14
15 Accordingly, Plaintiff has failed to demonstrate any error in
16 the ALJ’s consideration of Dr. Schosheim’s opinions. The ALJ’s
17 findings and conclusions must be upheld, as they are based on
18 specific and legitimate reasons, and supported by substantial
19 evidence in the record. See Brown-Hunter v. Colvin, 806 F.3d 487,
20 492 (9th Cir. 2015) (ALJ determines credibility, resolves conflicts
21 in the testimony, and resolves ambiguities in the record); Lewis
22 v. Astrue, 498 F.3d 909, 911 (9th Cir. 2007) (“[I]f evidence is
23 susceptible of more than one rational interpretation, the decision
24 of the ALJ must be upheld”).

1 **B. The ALJ Properly Discounted Plaintiff's Subjective Statements**

2
3 **1. Pertinent Facts**

4
5 Plaintiff testified at the hearing on January 25, 2018, that
6 she had been unable to work due to lower back pain and neck pain
7 that radiated down her right arm. (AR 69-72, 85). She had been
8 treated with pain medications, physical therapy, and different
9 injections. (AR 72-73, 82-84, 86-89). She stated that her
10 injections provided some temporary relief to her pain. (AR 84).
11 She also underwent neck surgery in January 2013 and low back surgery
12 in January 2016. (AR 74). Plaintiff stated that her 2013 surgery
13 did not help. (AR 75). She also testified that she had been in
14 psychiatric treatment since 2012, and had developed problems
15 remembering and concentrating. (AR 89-92).

16
17 Plaintiff testified that she had difficulty grasping and
18 lifting objects (AR 74), and she could not stand for more than
19 thirty minutes before needing to lie down (AR 77). She stated,
20 moreover, that she needed to lie down periodically throughout the
21 day to alleviate the pain. (AR 77-78). She testified that she
22 drove, bathed, and dressed herself, though with some difficulty.
23 (AR 80, 82). Plaintiff reported that around January 2013, she
24 began living with her sister, who helped with daily activities.
25 (AR 92).

26
27 The ALJ, assessing these statements and record as a whole,
28 found that while Plaintiff's "medically determinable impairments

1 could reasonably be expected to cause the alleged symptoms," her
2 "statements concerning the intensity, persistence and limiting
3 effects of these symptoms [were] not entirely consistent with the
4 medical evidence and other evidence in the record for the reasons
5 explained in th[e] decision." (AR 31). The ALJ remarked that
6 "there appears to be a disconnect between [Plaintiff's] subjective
7 complaints regarding the period now at issue on one side, and what
8 the comparatively modest diagnostic and clinical evidence regarding
9 that period will reasonably support on the other." (AR 37). In
10 addition to the objective medical evidence, the ALJ found that the
11 severity of Plaintiff's subjective complaints was undermined, as
12 well, by her treatment history and her daily activities. (AR 37-
13 39).

14

15 **2. Applicable Law**

16

17 "A claimant's residual functional capacity is what he can
18 still do despite his physical, mental, nonexertional, and other
19 limitations." Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th
20 Cir. 1989) (citing 20 C.F.R. § 404.1545). An RFC assessment
21 requires the ALJ to consider a claimant's impairments and any
22 related symptoms that may "cause physical and mental limitations
23 that affect what [he] can do in a work setting." 20 C.F.R.
24 §§ 404.1545(a)(1), 416.945(a)(1). In determining a claimant's RFC,
25 the ALJ considers all relevant evidence, including a claimant's
26 statements and residual functional capacity assessments made by
27 consultative examiners, State Agency physicians, and medical
28

1 experts. 20 C.F.R. §§ 404.1545(a)(3), 416.945(a)(3); see also id.
2 §§ 404.1513(c), 416.913(c).

3
4 When assessing a claimant's credibility regarding subjective
5 pain or intensity of symptoms, the ALJ must engage in a two-step
6 analysis. Trevizo v. Berryhill, 871 F.3d 664, 678 (9th Cir. 2017).
7 First, the ALJ must determine if there is medical evidence of an
8 impairment that could reasonably produce the symptoms alleged.
9 Garrison v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014). "In this
10 analysis, the claimant is not required to show that her impairment
11 could reasonably be expected to cause the severity of the symptom
12 she has alleged; she need only show that it could reasonably have
13 caused some degree of the symptom." Id. (emphasis in original)
14 (citation omitted). "Nor must a claimant produce objective medical
15 evidence of the pain or fatigue itself, or the severity thereof."
16 Id. (citation omitted).

17
18 If the claimant satisfies this first step, and there is no
19 evidence of malingering, the ALJ must provide specific, clear and
20 convincing reasons for rejecting the claimant's testimony about
21 the symptom severity. Id. at 1014-15; see also Robbins, 466 F.3d
22 at 883 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of
23 malingering based on affirmative evidence thereof, he or she may
24 only find an applicant not credible by making specific findings as
25 to credibility and stating clear and convincing reasons for
26 each."). "This is not an easy requirement to meet: The clear and
27 convincing standard is the most demanding required in Social
28 Security cases." Garrison, 759 F.3d at 1015 (citation omitted).

1 Where, as here, the ALJ finds that a claimant suffers from a
2 medically determinable physical or mental impairment that could
3 reasonably be expected to produce her alleged symptoms, the ALJ
4 must evaluate "the intensity and persistence of those symptoms to
5 determine the extent to which the symptoms limit an individual's
6 ability to perform work-related activities for an adult." Soc.
7 Sec. Ruling ("SSR") 16-3p, 2017 WL 5180304, at *3. SSR 16-3p
8 superseded SSR 96-7p and eliminated the term "credibility" from
9 the Agency's sub-regulatory policy. However, the Ninth Circuit
10 has noted that SSR 16-3p "makes clear what [the Ninth Circuit's]
11 precedent already required":

12
13 that assessments of an individual's testimony by an ALJ
14 are designed to "evaluate the intensity and persistence
15 of symptoms after the ALJ finds that the individual has
16 a medically determinable impairment(s) that could
17 reasonably be expected to produce those symptoms, and
18 not to delve into wide-ranging scrutiny of the
19 claimant's character and apparent truthfulness.

20
21 Trevizo, 871 F.3d at 679 n.5 (quoting SSR 16-3p) (alterations
22 omitted).

23
24 In discrediting the claimant's subjective symptom testimony,
25 the ALJ may consider: "ordinary techniques of credibility
26 evaluation, such as . . . prior inconsistent statements concerning
27 the symptoms, and other testimony by the claimant that appears less
28 than candid; unexplained or inadequately explained failure to seek

1 treatment or to follow a prescribed course of treatment; and the
2 claimant's daily activities." Ghanim v. Colvin, 763 F.3d 1154,
3 1163 (9th Cir. 2014) (citation omitted). Inconsistencies between
4 a claimant's testimony and conduct, or internal contradictions in
5 the claimant's testimony, also may be relevant. Burrell v. Colvin,
6 775 F.3d 1133, 1137 (9th Cir. 2014). In addition, the ALJ may
7 consider the observations of treating and examining physicians
8 regarding, among other matters, the functional restrictions caused
9 by the claimant's symptoms. Smolen v. Chater, 80 F.3d 1273, 1284
10 (9th Cir. 1996); accord Burrell, 775 F.3d at 1137. However, it is
11 improper for an ALJ to reject subjective testimony based "solely
12 on a lack of objective medical evidence to fully corroborate the
13 claimant's allegations." Bray v. Comm'r of Soc. Sec. Admin., 554
14 F.3d 1219, 1227 (9th Cir. 2009) (citation omitted).

15
16 The ALJ must make a credibility determination with findings
17 that are "sufficiently specific to permit the court to conclude
18 that the ALJ did not arbitrarily discredit claimant's testimony."
19 Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008) (citation
20 omitted); see Brown-Hunter, 806 F.3d at 493 ("A finding that a
21 claimant's testimony is not credible must be sufficiently specific
22 to allow a reviewing court to conclude the adjudicator rejected
23 the claimant's testimony on permissible grounds and did not
24 arbitrarily discredit a claimant's testimony regarding pain.")
25 (citation omitted). Although an ALJ's interpretation of a
26 claimant's testimony may not be the only reasonable one, if it is
27 supported by substantial evidence, "it is not [the court's] role
28

1 to second-guess it.” Rollins v. Massanari, 261 F.3d 853, 857 (9th
2 Cir. 2001).

3. Analysis

3
4
5
6 Plaintiff contends that the ALJ failed to provide specific,
7 clear and convincing reasons to reject her testimony regarding her
8 symptoms and functional limitations. (See Joint Stip. at 20-25).
9 However, Plaintiff fails to identify any material error in the
10 ALJ’s assessment, which is supported by substantial evidence in
11 the record.

12
13 First, the ALJ reasonably found that the severity of
14 Plaintiff’s alleged limitations contrasted with “the comparatively
15 modest diagnostic and clinical evidence.” (AR 37). The ALJ
16 supported this with a detailed review of the medical evidence in
17 the record (as discussed above with respect to the first issue).
18 This factor, when accompanied by other clear and convincing
19 grounds, is an appropriate basis for discounting a claimant’s
20 subjective statements. See Rollins, 261 F.3d at 857 (“While
21 subjective pain testimony cannot be rejected on the sole ground
22 that it is not fully corroborated by objective medical evidence,
23 the medical evidence is still a relevant factor in determining the
24 severity of the claimant’s pain and its disabling effects.”); SSR
25 16-3p, *5 (“objective medical evidence is a useful indicator to
26 help make reasonable conclusions about the intensity and
27 persistence of symptoms, including the effects those symptoms may
28 have on the ability to perform work-related activities”).

1 The ALJ also reasonably discounted Plaintiff's testimony based
2 on evidence that her treatments were largely conservative and
3 generally effective in controlling Plaintiff's pain and symptoms.
4 See Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1006 (9th
5 Cir. 2006) ("Impairments that can be controlled effectively with
6 medication are not disabling for the purpose of determining
7 eligibility for SSI benefits."); Tommasetti, 533 F.3d at 1040 ("The
8 record reflects that Tommasetti responded favorably to conservative
9 treatment Such a response to conservative treatment
10 undermines Tommasetti's reports regarding the disabling nature of
11 his pain."); Crane v. Shalala, 76 F.3d 251, 254 (9th Cir. 1996)
12 ("evidence suggesting that [the claimant] responded well to
13 treatment" supports an adverse credibility finding). Here, the
14 ALJ noted, among other things, that while Plaintiff "did undergo
15 anterior cervical fusion with internal fixation on January 11,
16 2013, it apparently was completed successfully," considering that
17 Plaintiff's "surgeon noted that 'no complications occurred' and
18 [Plaintiff] herself reported months later that '[the surgery] was
19 helpful.'" (AR 33) (citing AR 578, 2885-86). The ALJ further found
20 that other than this 2013 surgery and some injections, Plaintiff's
21 conditions during the relevant period were "generally managed with
22 largely conservative treatment measures - such as medications,
23 routine follow-up appointments, and the like - and that these
24 measures did, by [Plaintiff's] own admission, yield some (albeit
25 reportedly not total) relief." (AR 37-38) (citing AR 508-09, 649,
26 691-92, 756-57, 1811, 1904). The ALJ remarked that he saw "little
27 in the way of other aggressive treatment measures in the period
28 now at issue - such as further surgeries to address one or more of

1 [Plaintiff's] spinal impairments, gastric bypass to alleviate her
2 obesity, ongoing hospitalizations (to treat one or more of her
3 physical impairments, mental impairments, or both), frequent
4 emergency room visits, or the like - for any of her conditions in
5 that period." (AR 38) (citing AR 1540).

6
7 The ALJ also found that, to the extent Plaintiff's symptoms
8 persisted despite prescribed treatments, it may be at least partly
9 due to Plaintiff's failure to fully comply with such treatments.
10 (AR 38). This, too, is an appropriate basis for discounting a
11 claimant testimony. See, e.g., Owen v. Astrue, 551 F.3d 792, 799-
12 800 & n.3 (8th Cir. 2008) ("claimant's noncompliance" with
13 prescribed treatment (e.g., "[failure to] follow regular exercise
14 and dietary plans") may be considered "inconsistent with a treating
15 physician's medical opinion"); Ohman v. Berryhill, 2018 WL 1316903,
16 *9 (E.D. Cal. Mar. 14, 2018) ("A plaintiff's failure to follow a
17 physician's prescribed course of treatment is a specific and
18 legitimate reason for rejection [of] the physician's opinion.")
19 (citations omitted); see generally 20 C.F.R. § 404.1530(b) (if a
20 claimant "do[es] not follow [a doctor's] prescribed treatment
21 without a good reason" may not be found disabled). Here, for
22 example, the ALJ specifically noted evidence indicating that
23 Plaintiff, at times, had failed to keep up with her medications or
24 attend therapy appointments. (AR 38) (citing AR 578, 751, 805).
25 Moreover, to the extent that financial concerns may have
26 contributed to Plaintiff's treatment noncompliance, the ALJ also
27 found that Plaintiff was "well aware of various programs that
28 provide care to those with specific [financial] needs." (AR 38-

1 39) (citing AR 1938, 2901). The ALJ thus reasonably determined
2 that if Plaintiff's conditions had been as debilitating as she
3 claimed, then "one might reasonably expect that [Plaintiff] would
4 have sought - and, if warranted, received - more consistent and/or
5 more aggressive forms of care in that period." (AR 39).

6
7 In addition, the ALJ supported his assessment of Plaintiff's
8 testimony by finding that Plaintiff's daily activities were "not
9 fully consistent with claims of disabling impairment." (AR 39).
10 The ALJ noted, for example, that Plaintiff admitted she was able
11 to do laundry, dress herself, drive, and engage in other activities,
12 such as going to the "[g]ym for water and sauna," that "one might
13 not expect a person with [Plaintiff's] allegedly disabling symptoms
14 (such as debilitating pain and memory problems) to be able to
15 perform." (AR 39) (citing AR 527; see also AR 80, 82). In
16 considering these activities, the ALJ clarified that he was "not
17 saying that [Plaintiff's] activities, by themselves, equate[d] with
18 work activity or show[ed] the ability to engage in work." (AR 39).
19 The ALJ found, rather, that Plaintiff's activities "suggest[ed]
20 that she had greater capabilities in the period at issue" than she
21 alleged. (AR 39). This factor, while not overwhelming on its own,
22 reasonably supported the ALJ's conclusion that Plaintiff's
23 "allegations of disabling impairment [were] not entirely consistent
24 with the overall record." (AR 39); see Burrell, 775 F.3d at 1137
25 ("Inconsistencies between a claimant's testimony and the claimant's
26 reported activities provide a valid reason for an adverse
27 credibility determination."); Ghanim, 763 F.3d at 1165 ("Engaging
28 in daily activities that are incompatible with the severity of

1 symptoms alleged can support an adverse credibility
2 determination.”); Molina v. Astrue, 674 F.3d 1104, 1113 (9th Cir.
3 2012) (“Even where [a claimant’s] activities suggest some
4 difficulty functioning, they may be grounds for discrediting the
5 claimant’s testimony to the extent that they contradict claims of
6 a totally debilitating impairment.”); Burch v. Barnhart, 400 F.3d
7 676, 680-81 (9th Cir. 2005) (claimant’s allegations of disability
8 properly discredited where claimant was able to care for her own
9 personal needs, cook, clean, shop, interact with her nephew and
10 boyfriend, and manage finances).

11
12 Accordingly, the ALJ appropriately discounted Plaintiff’s
13 subjective testimony by providing specific, clear and convincing
14 reasons supported by substantial evidence in the record.

15
16 **C. The ALJ Properly Found Plaintiff Not Disabled at Step Five**

17
18 **1. Applicable Law**

19
20 At step five of the sequential evaluation process, “the
21 Commissioner has the burden to identify specific jobs existing in
22 substantial numbers in the national economy that a claimant can
23 perform despite his identified limitations.” Zavalin v. Colvin,
24 778 F.3d 842, 845 (9th Cir. 2015) (citation omitted). In making
25 this finding, the ALJ determines “whether, given the claimant’s
26 RFC, age, education, and work experience, he actually can find some
27 work in the national economy.” Id. at 846 (citation omitted); see
28 also 20 C.F.R. § 404.1520(g) (“we will consider [your RFC] together

1 with your vocational factors (your age, education, and work
2 experience) to determine if you can make an adjustment to other
3 work”).

4
5 The ALJ generally relies on the testimony of the vocational
6 expert to make the appropriate determination at step five. 20
7 C.F.R. § 404.1566(e); 20 C.F.R. § 416.966(e). An ALJ may call upon
8 the vocational expert to testify as to “(1) what jobs the claimant,
9 given his or her [RFC], would be able to do; and (2) the
10 availability of such jobs in the national economy.” Tackett v.
11 Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999). In doing so, an ALJ
12 “poses hypothetical questions to the vocational expert that set
13 out all of the claimant’s impairments for the vocational expert’s
14 consideration.” Id. (citation omitted). When a hypothetical
15 includes “all of the limitations that the ALJ found credible and
16 supported by substantial evidence in the record,” then the ALJ may
17 properly rely on the vocational expert’s response. Bayliss v.
18 Barnhart, 427 F.3d 1211, 1217-18 (9th Cir. 2005); Osenbrock v.
19 Apfel, 240 F.3d 1157, 1163 (9th Cir. 2001) (testimony of qualified
20 vocational expert constitutes substantial evidence); Johnson v.
21 Shalala, 60 F.3d 1428, 1435 (9th Cir. 1995) (“[T]he ALJ was within
22 his rights to rely solely on the vocational expert’s testimony.”)
23 (quoting Conn v. Sec’y of Health and Human Servs., 51 F.3d 607,
24 610 (6th Cir. 1995)).

1 **2. Analysis**

2
3 Plaintiff contends that the ALJ erred in finding Plaintiff
4 not disabled at step five because the ALJ relied on the vocational
5 expert's response to a hypothetical that omitted the work-related
6 limitations assessed by medical expert Dr. Schosheim in response
7 to Plaintiff's counter-interrogatories - specifically, Dr.
8 Schosheim's responses indicating Plaintiff would be off-task up to
9 two hours in an eight-hour workday and would miss work 3-5 days a
10 month. (Joint Stip. at 36; see AR 4413). As Plaintiff points out,
11 the vocational expert stated that these additional limitations
12 would preclude any full-time sustained employment in jobs existing
13 in significant numbers in the national economy. (AR 487-89).

14
15 However, as discussed above (with respect to the first issue),
16 the ALJ appropriately rejected these additional limitations
17 assessed by Dr. Schosheim, and thus did not incorporate such
18 limitations in the RFC assessment. (See AR 30-31, 36). At step
19 five, the ALJ relied on the vocational expert's response to a
20 hypothetical that contained all the same functional limitations
21 that the ALJ assessed in the RFC. (See AR 30-31, 40-43, 481-82).
22 For the reasons discussed above, Plaintiff has failed to identify
23 any material error in the ALJ's RFC assessment. Accordingly, the
24 ALJ properly relied on the vocational expert's response at step
25 five, which constitutes substantial evidence in support of the
26 ALJ's decision. See Bayliss, 427 F.3d at 1217-18; Osenbrock, 240
27 F.3d at 1163.

