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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOYCE COTTON LACY,	)	NO. EDCV 08-01270 SS
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM DECISION AND ORDER</b>
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the Social	)	
Security Administration,	)	
	)	
Defendant.	)	
_____	)	

**INTRODUCTION**

Joyce Cotton Lacy ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying her application for Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. This matter is before the Court on the parties' Joint Stipulation ("Jt. Stip.") filed on July 9, 2009. For the reasons stated below, the decision of the Commissioner is AFFIRMED.



1 disabilities limit her ability to work by causing "[a]rm weakness," and  
2 preventing her from "lift[ing] over 10 lbs." (Id.). Plaintiff further  
3 claims that she has to "avoid prolonged standing or bending" because  
4 this causes her "knees [to] hurt badly." (Id.).  
5

6 **B. Relevant Medical History**

7  
8 **1. Treating Physicians**

9  
10 In a summary report dated August 30, 2006, Dr. Lilian Chang, M.D.  
11 ("Dr. Chang") writes that she performed an internal medicine evaluation  
12 on Plaintiff. (AR 135-39). Dr. Chang's diagnostic impression of  
13 Plaintiff was as follows:  
14

15 This 46-years-old, African American female presents with  
16 hypertension, hepatitis C, and bilateral knee pain.  
17

18 Today's evaluation reveals no evidence of acute congestive  
19 heart failure. Her cardiovascular examination is  
20 unremarkable and her blood pressure is adequately controlled  
21 on medication at 134/82.  
22

23 On the abdominal examination, there is no tenderness to  
24 palpation, rebound, or guarding. There are no stigmata of  
25 liver cirrhosis and no jaundice.  
26  
27  
28

1 Her musculoskeletal examination is remarkable for tenderness  
2 to palpation of both knees, limited range of motion, and a  
3 slow gait. Her knee x-rays are currently pending.  
4

5 (AR 138). Dr. Chang's functional assessment of Plaintiff was as  
6 follows:  
7

8 With the limited range of motion of the knee joints,  
9 [Plaintiff] should be capable of lifting and carrying 20  
10 pounds occasionally and 10 pounds frequently. Standing and  
11 walking can be done cumulatively up to four hours of an  
12 eight-hour day. [Plaintiff] can sit for up to six hours of an  
13 eight-hour day. Bending, stooping, crouching, kneeling,  
14 squatting, and climbing can be done occasionally. She is not  
15 limited in using the extremities for pushing, pulling,  
16 reaching, handling, grasping, or fingering. There are no  
17 limitations in terms of hearing, seeing, or speaking.  
18

19 (AR 139).  
20

21 In a radiology report dated August 30, 2006, Dr. T. Divakaran, M.D.  
22 ("Dr. Divakaran") makes the following findings regarding Plaintiffs left  
23 and right knees:  
24

25 The bony alignment is normal. No fractures are seen. Spurs  
26 are noted mainly from the lateral articular margins of the  
27 femur and tibia, tibial spine and minimally from the dorsal  
28 surface of the patella. There is tibiofemoral joint space

1 narrowing, more prominent in the medial compartment. There  
2 is also calcification of the quadriceps tendinous attachment  
3 to the patella.

4  
5 (AR 140). Dr. Divakaran's impression of Plaintiff's left and right  
6 knees was as follows:

7  
8 Mild to moderate osteoarthritis. Calcification, quadriceps  
9 attachment.

10  
11 (Id.).

12  
13 In a visual acuity report dated August 30, 2006, a staff member of  
14 the Royalty Medical Group indicates that the Plaintiff "can visually  
15 move about the office without any help." (AR 141).

16  
17 Finally, Plaintiff visited the Arrowhead Regional Medical Center  
18 emergency room on November 10, 2006 and December 18, 2006. (AR 152-53,  
19 57-58). While these medical records are largely illegible, Plaintiff  
20 appears to have been treated for back problems and hypertension. (Id.).

21  
22 **2. State Agency Physicians**

23  
24 Dr. M. H. Yee, M.D. ("Dr. Yee") reviewed Plaintiff's medical  
25 records for the Disability Determination Service ("DDS") and issued a  
26 Physical Residual Functional Capacity Assessment on September 6, 2006.  
27 (AR 142-48). Dr. Yee wrote that both of Plaintiff's "knees show mild  
28

1 to moderate osteoarthritis," that Plaintiff "is extremely obese with BMI  
2 approx[imately] 41" and that "[a] sedentary RFC would not be precluded."  
3 (AR 146). Dr. Yee indicated that Plaintiff could occasionally lift  
4 and/or carry 20 pounds, frequently lift and/or carry 10 pounds, stand  
5 or walk at least 2 hours in an 8-hour workday, and sit about 6 hours in  
6 an 8-hour workday. (AR 143). Dr. Yee found that Plaintiff could push  
7 and/or pull without limitations and could stand/walk for 4 hours in an  
8 8-hour workday. (Id.). Dr. Yee further found that Plaintiff could  
9 occasionally balance, stoop, kneel, crouch, crawl and occasionally climb  
10 ramps and stairs, but never climb ladders, ropes, or scaffolds. (AR  
11 144). Dr. Yee determined that Plaintiff had no manipulative  
12 limitations, visual limitations, communicative limitations, or  
13 environmental limitations, except that Plaintiff should avoid  
14 concentrated exposure to vibration and even moderate exposure to  
15 hazards. (AR 144-45). Finally, Dr. Yee wrote that Plaintiff's symptoms  
16 were attributable to a "medically determinable impairment." (AR 145).

17  
18 Dr. M. E. Bayar, M.D. ("Dr. Bayar") reviewed Plaintiff's medical  
19 records for the Disability Determination Service ("DDS") and issued a  
20 Case Analysis on December 27, 2006. (AR 154-55). Dr. Bayar's findings  
21 were consistent with the prior determination by Dr. Yee:

22  
23 No additional [medical records] w[ere] rec[eive]d. There  
24 doesn't appear to be any significant change in [Plaintiff's]  
25 overall condition. Suggest reaffirming prior sedentary RFC.

26  
27 (AR 155).



1 (3) Does the claimant's impairment meet or equal the  
2 requirements of any impairment listed at 20 C.F.R. Part  
3 404, Subpart P, Appendix 1? If so, the claimant is  
4 found disabled. If not, proceed to step four.

5  
6 (4) Is the claimant capable of performing her past work? If  
7 so, the claimant is found not disabled. If not, proceed  
8 to step five.

9  
10 (5) Is the claimant able to do any other work? If not, the  
11 claimant is found disabled. If so, the claimant is  
12 found not disabled.

13  
14 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d  
15 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§  
16 404.1520(b)-(g)(1), 416.920(b)-(g)(1).

17  
18 The claimant has the burden of proof at steps one through four, and  
19 the Commissioner has the burden of proof at step five. Bustamante, 262  
20 F.3d at 953-54. If, at step four, the claimant meets his or her burden  
21 of establishing an inability to perform the past work, the Commissioner  
22 must show that the claimant can perform some other work that exists in  
23 "significant numbers" in the national economy, taking into account the  
24 claimant's residual functional capacity, age, education and work  
25 experience. Tackett, 180 F.3d at 1100; 20 C.F.R. § 416.920(g)(1). The  
26 Commissioner may do so by the testimony of a vocational expert or by  
27 reference to the Medical-Vocational Guidelines appearing in 20 C.F.R.  
28 Part 404, Subpart P, Appendix 2 (commonly known as "the Grids").



1 Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a  
2 claimant has both exertional (strength-related) and nonexertional  
3 limitations, the Grids are inapplicable and the ALJ must take the  
4 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864, 869  
5 (9th Cir. 2000).

6  
7 **THE ALJ'S DECISION**  
8

9 At step one, the ALJ found that Plaintiff had not engaged in  
10 substantial gainful activity since July 13, 2006. (AR 19).  
11

12 At step two, the ALJ found that Plaintiff's severe impairments were  
13 "obesity, bilateral knee degeneration, [and] hypertension." (AR 19).  
14

15 At step three, the ALJ concluded that Plaintiff "d[id] not have an  
16 impairment or combination of impairments that meets or medically equals  
17 one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix  
18 1." (AR 19).  
19

20 At step four, the ALJ found that Plaintiff "ha[d] no past relevant  
21 work." (AR 21). The ALJ found that Plaintiff had the residual  
22 functional capacity ("RFC") to "perform light work except she can lift  
23 and carry 20 pounds occasionally, 10 pounds frequently." (AR 19). The  
24 ALJ further found that Plaintiff could "stand and walk 2 hours in an 8  
25 hour day, sit without restrictions, . . . occasionally climb, balance,  
26 stoop, kneel, [and] crouch[,]" but could not climb ladders or work near  
27 "unprotected heights" or "hazardous equipment." (Id.).  
28

1 The vocational expert ("VE") testified that Plaintiff's past work  
2 included being a "fast food worker, donut shop." (AR 9). The ALJ  
3 questioned the VE about Plaintiff's earnings as a fast food worker and  
4 speculated about whether this work qualified as substantial gainful  
5 activity. (Id.). Based on Plaintiff's RFC, the ALJ posed the following  
6 hypothetical to the vocational expert ("VE"):

7  
8 [A]ssume the following; lifting and carrying light work level  
9 20 pounds occasionally, 10 pounds frequently, standing and  
10 walking two out of eight in the day, sitting six hours a day  
11 in a day [sic], occasional climbing, balancing, stooping,  
12 kneeling, crouching crawling, no ladders, no vibrating tools,  
13 no unprotected heights, no hazardous equipment. Past work  
14 done?

15  
16 (AR 10). The VE responded, "No, Your Honor." (Id.).

17  
18 The ALJ ultimately concluded that Plaintiff's prior work as a fast  
19 food worker did not qualify as substantial gainful activity. (AR 21)  
20 ("The [Plaintiff] has no past relevant work.").

21  
22 At step five, the ALJ found that "there are jobs that exist in  
23 significant numbers in the national economy that the [Plaintiff] can  
24 perform." (AR 22). The ALJ asked the VE whether "[o]ther work [could]  
25 be done within [the above] limitations." The VE responded as follows:  
26  
27  
28

1 I believe that comes closer to the full range of  
2 sedentary work, Your Honor. Of which there are 137 different  
3 occupational titles. And some examples -

4  
5 . . . .

6  
7 - reception information clerks, telephone quotation  
8 clerks. 237.367-046. Unskilled, SVP 2, sedentary in nature.  
9 4,800 in the local economy. This is the Greater Los Angeles  
10 and Orange counties. 98,000 nationally. The number of  
11 general office types jobs, this is a document preparer. DOT  
12 249.587-018. Unskilled, sedentary, SVP 2. 3,200 locally.  
13 63,000 nationally.

14  
15 (AR 10).

16  
17 Based on the above RFC and the testimony of the VE, the ALJ  
18 concluded that Plaintiff could work as a telephone quotation clerk and  
19 as a general office worker. (AR 22). Accordingly, the ALJ determined  
20 that "a finding of 'not disabled' [was] . . . appropriate." (Id.).

21  
22 **STANDARD OF REVIEW**

23  
24 Under 42 U.S.C. § 405(g), a district court may review the  
25 Commissioner's decision to deny benefits. The court may set aside the  
26 Commissioner's decision when the ALJ's findings are based on legal error  
27 or are not supported by substantial evidence in the record as a whole.

1 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.  
2 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

3  
4 "Substantial evidence is more than a scintilla, but less than a  
5 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence  
6 which a reasonable person might accept as adequate to support a  
7 conclusion." Id. To determine whether substantial evidence supports  
8 a finding, the court must "'consider the record as a whole, weighing  
9 both evidence that supports and evidence that detracts from the  
10 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny  
11 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can  
12 reasonably support either affirming or reversing that conclusion, the  
13 court may not substitute its judgment for that of the Commissioner.  
14 Reddick, 157 F.3d at 720-21.

## 15 16 DISCUSSION

### 17 18 **A. The ALJ Satisfied His Duty To Develop The Record**

19  
20 Plaintiff asserts that the ALJ failed to properly develop the  
21 record by not "allow[ing] Plaintiff to testify at her hearing." (Jt.  
22 Stip. at 4). This Court disagrees.

23  
24 The ALJ has an affirmative duty to fully and fairly develop the  
25 record in a social security case. Tonapetyan v. Halter, 242 F.3d 1144,  
26 1150 (9th Cir. 2001). The duty is heightened when the claimant is  
27 unrepresented or is mentally ill and thus unable to protect her own  
28 interests. Id. However, only ambiguous evidence, or the ALJ's own

1 finding that the record is inadequate to allow for proper evaluation of  
2 the evidence, triggers the ALJ's duty to conduct an appropriate inquiry  
3 or gather additional information. Id.; see also Thomas v. Barnhart, 278  
4 F.3d 947, 958 (9th Cir. 2002) (duty not triggered where the ALJ did not  
5 make a finding that the medical report was inadequate to make a  
6 disability determination).

7  
8 In this case, the hearing before the ALJ commenced at 9:26 a.m. on  
9 October 31, 2007, although it was scheduled for 9:00 a.m. (AR 7, 71).  
10 The ALJ noted that Plaintiff's counsel was present at the hearing, but  
11 that Plaintiff was not. (Id.). Plaintiff's counsel explained that  
12 Plaintiff was "delayed in traffic." (Id.). Plaintiff's counsel further  
13 stated that he called Plaintiff "about a half hour ago or a little bit  
14 over a half hour ago," and that "[s]he said she was about a half hour  
15 away." (Id.). The ALJ noted that Plaintiff was "a half hour late" and  
16 decided to commence the hearing without her. (Id.). The ALJ explained,  
17 however, that "[i]f [Plaintiff] shows up, she can continue," but that  
18 "[i]f she doesn't show up by the time we're done, well then she can show  
19 cause as to why she wasn't here." (AR 7-8). Plaintiff's counsel  
20 responded, "Very good." (AR 8). Plaintiff never arrived at the  
21 hearing.

22  
23 The ALJ then proceeded with the hearing and gave Plaintiff's  
24 counsel numerous opportunities to represent Plaintiff's interests.  
25 First, the ALJ asked Plaintiff's counsel if he had any objections to the  
26 exhibits. (AR 8). Plaintiff's counsel responded in the negative.  
27 (Id.). Second, the ALJ asked Plaintiff's counsel if he had any  
28 additional exhibits. (Id.) ("Anything pending?). Plaintiff's counsel

1 responded in the negative. (Id.). Third, the ALJ asked Plaintiff's  
2 counsel if he wanted to give an opening statement. (AR 8-9).  
3 Plaintiff's counsel responded in the negative. (AR 9). The ALJ then  
4 proceeded to ask questions of the vocational expert.

5  
6 The ALJ asked Plaintiff's counsel if wanted to question the VE.  
7 (AR 10). Plaintiff's counsel responded in the negative. (Id.).  
8 Finally, the ALJ asked Plaintiff's counsel if there was "[a]nything  
9 else." (Id.). Plaintiff's counsel responded in the negative. (AR 11).  
10 The ALJ then closed the hearing. (Id.).  
11

12 Plaintiff argues that the ALJ should not have conducted the hearing  
13 in Plaintiff's absence because "there is no order to show cause in order  
14 for the Plaintiff to justify why she did not attend her hearing." (Jt.  
15 Stip. at 3) ("[T]he record is void of any order to show cause.").  
16 Contrary to Plaintiff's claim, however, the ALJ issued a Notice to Show  
17 Cause for Failure to Appear ("Notice to Show Cause") on October 31,  
18 2007, which was mailed to Plaintiff's address of record as well as her  
19 counsel. (AR 71-72). The Notice to Show Cause specifically informed  
20 Plaintiff that she had the opportunity to explain her absence and that  
21 if she could show "good cause," the ALJ would schedule a new hearing.  
22 (AR 71). The Notice to Show Cause further informed Plaintiff that she  
23 had until November 12, 2007 to provide a written statement. (Id.).  
24 Plaintiff failed to file any response to the Notice to Show Cause.  
25

26 In sum, the ALJ satisfied his duty to develop the record by  
27 delaying the start of the hearing and offering Plaintiff's counsel an  
28 opportunity to challenge the evidence and question the VE. Furthermore,

1 the ALJ issued the Notice to Show Cause, which allowed Plaintiff the  
2 opportunity to explain her absence from the hearing and request a new  
3 hearing. (AR 71-72). Plaintiff chose not to avail herself of this  
4 opportunity. No remand is necessary.

5  
6 **B. The ALJ Properly Considered The Plaintiff's Pain Questionnaire**

7  
8 Plaintiff asserts that the ALJ failed to properly consider her  
9 statements regarding pain in the Pain Questionnaire. (Jt. Stip. at 6).  
10 This Court disagrees.

11  
12 To determine whether a claimant's testimony regarding subjective  
13 pain or symptoms is credible, an ALJ must engage in a two-step analysis.  
14 First, the ALJ must determine whether the claimant has presented  
15 objective medical evidence of an underlying impairment "which could  
16 reasonably be expected to produce the pain or other symptoms alleged.  
17 Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir. 2007) (citing  
18 Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir. 1991) (en banc))  
19 (internal quotation marks omitted). The claimant, however, "'need not  
20 show that her impairment could reasonably be expected to cause the  
21 severity of the symptom she has alleged; she need only show that it  
22 could reasonably have caused some degree of the symptom.'" Id. (quoting  
23 Smolen, 80 F.3d at 1282). Second, if the claimant meets this first  
24 test, and there is no evidence of malingering, "the ALJ can reject the  
25 claimant's testimony about the severity of her symptoms only by offering  
26 specific, clear and convincing reasons for doing so." Smolen, 80 F.3d  
27 at 1281.

1 Here, Plaintiff wrote in the Pain Questionnaire that she  
2 experiences “[s]harp [and] throbbing” pain “every day” in her “[k]nees  
3 [and] legs.” (AR 108). Plaintiff explained that “[b]eing on [her] feet  
4 causes sharp pains in [her] knees” and that the pain “go[es] to [her]  
5 [l]ower [b]ack.” (Id.).

6  
7 In his decision, however, the ALJ provided the following clear and  
8 convincing reasons to reject Plaintiff’s statements regarding pain:

9  
10 [Aside from Dr. Chang’s internal medicine evaluation in  
11 August of 2006,] [t]he [Plaintiff] presented no other  
12 significant objective medical evidence of a medically  
13 determinable impairment or impairment related limitations.  
14 Nonetheless, she maintains she is unable to work due to her  
15 alleged subjective symptoms. However, the undersigned notes  
16 the [Plaintiff] has not established a medically determinable  
17 impairment which would reasonably be expected to produce such  
18 limitations. Her hypertension is well controlled without  
19 evidence of end-organ damage or other complications. With  
20 regards [sic] to her knees, the [Plaintiff] is not described  
21 as a surgical candidate, nor is there any evidence she has  
22 required extended periods of hospital confinement, emergency  
23 room treatment, use of a TENS unit, participation in a pain  
24 control clinic, or other extensive or significant forms of  
25 treatment commonly prescribed for intense pain. The  
26 [Plaintiff] has no abnormalities of gait, nor are any  
27 assistive devices required. While the [Plaintiff] asserted  
28 a chronic and debilitating pain syndrome of extended



1 duration, it is noted she exhibited no evidence of diffuse  
2 atrophy or muscle wasting, common indicators of chronic pain.  
3 There is no credible evidence of regular usage of strong  
4 medication to alleviate symptoms that would significantly  
5 impair the [Plaintiff's] ability to do basic work activities.  
6 There was no evidence in the medical record of any  
7 significant side effects. Accordingly, the undersigned  
8 concludes the [Plaintiff's] allegations, although appearing  
9 sincere, are not fully credible regarding the extent,  
10 intensity and duration of the alleged subjective symptoms and  
11 functional limitations and restrictions.

12  
13 (AR 21).

14  
15 Plaintiff acknowledges that the ALJ "offered much discussion of  
16 [her] statements and testimony," but argues that he "did not properly  
17 consider [her] pain testimony." (Jt. Stip. at 7). However, as set  
18 forth above, the ALJ determined that Plaintiff had failed to present  
19 "significant objective medical evidence of a medically determinable  
20 impairment or impairment related limitations." (AR 21).

21  
22 In addition, the ALJ provided several clear and convincing reasons  
23 for rejecting Plaintiff's pain allegations. First, the ALJ noted that  
24 Plaintiff's "hypertension is well controlled without evidence of end-  
25 organ damage or other complications." (Id.). Indeed, Dr. Chang  
26 concluded that Plaintiff's "cardiovascular examination [wa]s  
27 unremarkable and [that] her blood pressure [wa]s adequately controlled  
28 on medication." (AR 138). Second, the ALJ found that there was no

1 evidence of "extensive or significant forms of treatment commonly  
2 prescribed for intense pain." (AR 21). Indeed, the Ninth Circuit has  
3 held that "evidence of conservative treatment is sufficient to discount  
4 a claimant's testimony regarding severity of an impairment." Parra v.  
5 Astrue, 481 F.3d 742, 751 (9th Cir. 2007) (internal quotation marks  
6 omitted). Third, the ALJ found that "[t]here [wa]s no credible evidence  
7 of regular usage of strong medication to alleviate symptoms that would  
8 significantly impair the [Plaintiff's] ability to do basic work  
9 activities." (AR 21). Indeed, Dr. Chang wrote in her August 30, 2006  
10 summary report that Plaintiff reported "alleviation of the knee pain by  
11 resting or taking Indocin." (AR 135); see also Bunnell, 947 F.2d at 346  
12 (ALJ may consider type, dosage, and effectiveness of pain medication to  
13 determine credibility of claimant's allegations). As Plaintiff's  
14 alleged pain was alleviated by medication, this was a convincing reason  
15 to discount her statements regarding pain.

16  
17 The Court notes that Dr. Chang specifically took into account the  
18 Plaintiff's "limited range of motion of the knee joints" in formulating  
19 her functional assessment. (AR 139). Dr. Chang ultimately concluded  
20 that Plaintiff could stand and walk "up to four hours of an eight-hour  
21 day." (Id.). The ALJ, however, crafted an even more limited RFC,  
22 determining that Plaintiff could stand and walk only "2 hours in an 8  
23 hour day." (AR 19). Thus, the ALJ gave some credit to Plaintiff's  
24 testimony about her knee pain and appropriated credited this testimony  
25 in his more limited RFC.

26  
27 In sum, the ALJ appropriately considered the Plaintiff's pain  
28 testimony by determining that Plaintiff had not presented objective

1 medical evidence of an underlying impairment which could reasonably be  
2 expected to produce the pain alleged. Additionally, the ALJ provided  
3 multiple clear and convincing reasons to reject Plaintiff's allegations  
4 regarding her level of pain. Thus, no remand is necessary.

5  
6 **C. The Hypothetical Contained All Limitations Supported By**  
7 **Substantial Evidence**

8  
9 Plaintiff asserts that the ALJ did not pose a full hypothetical to  
10 the VE because the hypothetical did not contain limitations based on  
11 Plaintiff's pain. (Jt. Stip. at 20-22). This Court disagrees.

12  
13 As set forth above, see supra Part B, the ALJ appropriately  
14 considered Plaintiff's pain testimony. See Osenbrock, 240 F.3d at 1163  
15 ("An ALJ must propose a hypothetical that is based on medical  
16 assumptions supported by substantial evidence in the record that  
17 reflects each of the claimant's limitations."). Because Plaintiff's  
18 subjective claims about her knee pain were contradicted by the objective  
19 medical evidence, the ALJ was not required to include limitations based  
20 on knee pain in the hypothetical. See id. at 1164 ("Because [the  
21 plaintiff] did not present any evidence that he suffers from sleep  
22 apnea, diabetes, organic brain disorder, or hepatitis in support of his  
23 disability claim, the ALJ did not err in failing to include these  
24 alleged impairments in the hypothetical question posed to the VE.").

25  
26 Nevertheless, the ALJ's hypothetical incorporated limitations based  
27 on Plaintiff's knee pain by stating that the hypothetical worker could  
28 only stand and walk "two out of eight [hours] in the day." (AR 10).

1 As explained above, see supra Part B, Dr. Chang specifically took into  
2 account the Plaintiff's "limited range of motion of the knee joints" and  
3 concluded that Plaintiff could stand and walk "up to four hours of an  
4 eight-hour day." (AR 139). Thus, the ALJ's hypothetical contained even  
5 greater limitations than found by Dr. Chang.

6  
7 In sum, the Court finds that the ALJ's hypothetical contained all  
8 limitation supported by substantial evidence. See Rollins v. Massanari,  
9 261 F.3d 853, 858 (9th Cir. 2001) ("Because the ALJ included all of the  
10 limitations that he found to exist, and because his findings were  
11 supported by substantial evidence, the ALJ did not err in omitting the  
12 other limitations that [the plaintiff] had claimed, but had failed to  
13 prove."). Thus, no remand is necessary.

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1 **CONCLUSION**

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

8  
9 DATED: August 10, 2009.

10 /S/

11 \_\_\_\_\_  
12 SUZANNE H. SEGAL  
13 UNITED STATES MAGISTRATE JUDGE  
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16  
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26 \_\_\_\_\_  
27 <sup>3</sup> This sentence provides: "The [district] court shall have power  
28 to enter, upon the pleadings and transcript of the record, a judgment  
affirming, modifying, or reversing the decision of the Commissioner of  
Social Security, with or without remanding the cause for a rehearing."