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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALICIA RODRIGUEZ,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

NO. EDCV 11-2022 AGR

**MEMORANDUM OPINION AND
ORDER**

Plaintiff Alicia Rodriguez filed this action on January 4, 2012. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on January 13 and 18, 2012. (Dkt. Nos. 7, 9.) On September 4, 2012, the parties filed a Joint Stipulation ("JS") that addressed the disputed issues. The court has taken the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

1 I.

2 **PROCEDURAL BACKGROUND**

3 On October 14, 2009, Rodriguez filed an application for supplemental
4 security income. Administrative Record (“AR”) 21, 125-27. Rodriguez alleged a
5 disability onset date of April 1, 2007. AR 21, 125. The application was denied
6 initially and on reconsideration. AR 21, 55-56. Rodriguez requested a hearing
7 before an Administrative Law Judge (“ALJ”). AR 75. On April 7, 2011, the ALJ
8 conducted a hearing at which Rodriguez and a vocational expert testified. AR 39-
9 54. The ALJ granted Rodriguez’s request to hold the record open for 30 days to
10 obtain updated treatment records and records from Colton Valley Medical Care,
11 Inc. (“Colton Valley”). AR 46, 54. After the 30-day period expired, Rodriguez
12 submitted additional records on June 8, 2011. AR 242-425. On June 24, 2011,
13 the ALJ issued a decision denying benefits. AR 15-29. On November 30, 2011,
14 the Appeals Council denied Rodriguez’s request for review. AR 1-5. This action
15 followed.

16 II.

17 **STANDARD OF REVIEW**

18 Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner’s
19 decision to deny benefits. The decision will be disturbed only if it is not supported
20 by substantial evidence, or if it is based upon the application of improper legal
21 standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995) (per curiam);
22 *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

23 “Substantial evidence” means “more than a mere scintilla but less than a
24 preponderance – it is such relevant evidence that a reasonable mind might
25 accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In
26 determining whether substantial evidence exists to support the Commissioner’s
27 decision, the court examines the administrative record as a whole, considering
28 adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the

1 evidence is susceptible to more than one rational interpretation, the court must
2 defer to the Commissioner's decision. *Moncada*, 60 F.3d at 523.

3 III.

4 DISCUSSION

5 A. Disability

6 A person qualifies as disabled, and thereby eligible for such benefits, "only
7 if his physical or mental impairment or impairments are of such severity that he is
8 not only unable to do his previous work but cannot, considering his age,
9 education, and work experience, engage in any other kind of substantial gainful
10 work which exists in the national economy." *Barnhart v. Thomas*, 540 U.S. 20,
11 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003) (citation and quotation marks
12 omitted).

13 B. The ALJ's Findings

14 The ALJ found Rodriguez has the medically determinable impairments of
15 depression and lumbosacral strain/sprain. AR 23. She does not have an
16 impairment or combination of impairments that has significantly limited her ability
17 to perform basic work-related activities for 12 consecutive months. *Id.* The ALJ
18 concluded that Rodriguez has not been under a disability within the meaning of
19 the Social Security Act since October 14, 2009, the date she filed her application.
20 AR 21, 29.

21 C. Treating Physician

22 Rodriguez contends the ALJ did not properly consider the opinion of her
23 treating physician at Colton Valley. Because the physician's name is unknown,
24 this opinion refers to the physician simply as the treating physician.

25 An opinion of a treating physician is given more weight than the opinion of
26 non-treating physicians. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). To
27 reject an uncontradicted opinion of a treating physician, an ALJ must state clear
28 and convincing reasons that are supported by substantial evidence. *Bayliss v.*

1 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). When, as here, a treating
2 physician's opinion is contradicted by another doctor, "the ALJ may not reject this
3 opinion without providing specific and legitimate reasons supported by substantial
4 evidence in the record. This can be done by setting out a detailed and thorough
5 summary of the facts and conflicting clinical evidence, stating his interpretation
6 thereof, and making findings." *Orn*, 495 F.3d at 632 (citations and quotation
7 marks omitted). "When there is conflicting medical evidence, the Secretary must
8 determine credibility and resolve the conflict." *Thomas v. Barnhart*, 278 F.3d 947,
9 956-57 (9th Cir. 2002) (citation and quotation marks omitted).

10 The treating physician provided a form entitled, "Medical Opinion Re:
11 Ability To Do Work-Related Activities (Physical)," dated October 19, 2010. AR
12 239-41. The treating physician opined that Rodriguez can lift and carry less than
13 10 pounds frequently and occasionally. AR 239. She can stand and walk less
14 than 2 hours in an 8-hour day, and sit about 4 hours in an 8-hour day. *Id.* She
15 must walk around every 30 minutes for 30 minutes. AR 240. She requires a
16 sit/stand option. *Id.* She would need to lie down every 3 hours. *Id.* She can
17 occasionally twist, stoop, crouch, and climb stairs. *Id.* She can never climb
18 ladders. *Id.* She must avoid all exposure to extreme cold, wetness, and hazards
19 because the cold causes severe back and right knee pain. AR 241. She needs
20 to elevate her right leg 3 times a day. *Id.* She would be absent from work more
21 than 3 times a month due to her impairments or treatment. *Id.*

22 The ALJ considered the treating physician's opinion. AR 27. He gave
23 "little weight" to the opinion because it was: (1) an unsupported checklist-style
24 form that was brief, conclusory and inadequately supported by clinical findings;
25 (2) an accommodation to Rodriguez; and (3) the medical records contain no
26 treatment notes or diagnostic examinations of any physical impairment. *Id.*

27 The ALJ articulated specific and legitimate reasons supported by
28 substantial evidence in the record for discounting the treating physician's opinion.

1 An ALJ may discount a check-the-box report that does not explain the basis of its
2 conclusions. See *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195
3 (9th Cir. 2004) (ALJ properly rejected treating physician’s conclusory check-list
4 report); see also *Thomas*, 278 F.3d at 957 (an ALJ “need not accept the opinion
5 of any physician, including a treating physician, if that opinion is brief, conclusory,
6 and inadequately supported by clinical findings”). The treating physician’s
7 opinion was provided on a check-list questionnaire. AR 239-41. In response to
8 the question asking for medical findings to support these limitations, the treating
9 physician wrote: “N/A.” AR 240. The record contains no treatment records from
10 Colton Valley, even though the ALJ held the record open and gave Rodriguez an
11 additional 30 days to obtain the treatment records. AR 46, 54. The ALJ could
12 reasonably determine that the treating physician did not adequately explain the
13 basis of his or her opinions in the form and that there were no treating records
14 that contained notes or diagnostic examinations of any kind.

15 The ALJ further discounted the treating physician’s opinion because it was
16 an accommodation to Rodriguez. AR 27. Rodriguez argues “the ALJ does not
17 provide any evidence to support the conclusion that the [Treating Physician]’s
18 opinion is ‘completed as an accommodation to the claimant.’” JS 6. However, an
19 ALJ is entitled to reject the treating physician’s opinion if the doctor becomes an
20 advocate for a claimant. *Matney on Behalf of Matney v. Sullivan*, 981 F.2d 1016,
21 1020 (9th Cir. 1992). The ALJ may draw reasonable inferences logically flowing
22 from the record. *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). The
23 ALJ noted that the opinion included conclusions regarding functional limitations
24 without any rationale or support for such conclusions. AR 27. He noted the lack
25 of treatment notes or diagnostic examinations of Rodriguez’ physical impairment
26 by the treating physician. AR 27. The ALJ could reasonably infer from the record
27 that the treating physician’s opinion was an accommodation to Rodriguez.

28 Rodriguez argues that the treating physician’s October 19, 2010 opinion

1 was based on objective evidence because medical records indicate that, after a
2 fall at a Kmart, Rodriguez underwent right knee surgery in 1999 and a MRI in
3 1999 showed a central and left herniated disc at L4-L5 and L5-S1 with lumbar
4 radiculopathy and desiccation.¹ AR 329, 241, 401.

5 As the ALJ noted, the most recent treatment notes from the Arrowhead
6 Regional Medical Center Emergency Room indicated Rodriguez's complaints of
7 vaginal pain on September 16, 2010, and ear pain/cough on November 6, 2010.
8 AR 25, 228, 231. On both visits, physical examinations and psychological
9 examinations were performed. AR 229, 232. No problems with her back, knees
10 or depression were noted. AR 25-26, 228-29, 231-32.

11 The ALJ did not expressly discuss the 1999-2001 medical records, which
12 were provided after the hearing period was closed but before his decision. Any
13 error is harmless. These records concern a period roughly seven years prior to
14 the alleged onset of disability and are of limited relevance. *Carmickle v.*
15 *Commissioner, SSA*, 533 F.3d 1155, 1165 (9th Cir. 2007). Post-surgical
16 treatment notes from 1999 show that Rodriguez felt "fine," "stronger," and "good."
17 AR 379-80, 388-90. In a June 15, 2000 orthopedic evaluation, Dr. Simon found
18 that Rodriguez's right knee incision was well-healed, she could straight leg raise,
19 and her range of motion was zero to 140 degrees. AR 408. He noted "obvious
20 quadriceps atrophy" on the right side. *Id.* Rodriguez could toe walk and heel
21 walk and had "good range of motion of her LS spine with flexion hands to mid
22 tibias and no pain on back extension." AR 394. Her deep tendon reflexes,
23 patella and achilles were +2/4 and equal bilaterally. *Id.* Her EHL, quadriceps and
24 hamstring strength was 5/5 and equal bilaterally. *Id.* She had negative straight
25 leg raise in the seated and the supine position. *Id.* X-rays of the right knee
26 showed no obvious degenerative changes. *Id.* Rodriguez denied radiation down

27 ¹ The MRI was from 1999, not 2001, as Rodriguez contends. AR 344,
28 401.

1 the bilateral lower extremity, and denied any current back pain. AR 394, 408.
2 She reported occasional back pain that limited her in heavy lifting and moving.
3 AR 408. She had slight pain in her right knee when she ambulated for long
4 periods of time. *Id.* Dr. Simon assessed 3% impairment for her herniated disk
5 and 7% impairment to the lower extremity. AR 394.

6 On January 23, 2001, Dr. Hall provided a neurosurgical consultation. AR
7 399-402. He found Rodriguez to be “healthy appearing” and “in no distress.” AR
8 400. She had a normal gait. *Id.* In the neurological examination, Rodriguez had
9 a normal motor examination, upper strength testing 5/5 and lower strength testing
10 generally 5-/5-, decreased sensation to light touch on the right in the L4 to S1
11 distributions, and 2/2 deep tendon reflexes. AR 400-01. He noted the MRI of the
12 lumbar spine done in 1999 and his impression was lumbar radiculopathy with disk
13 herniation at L4-L5 and L5-S1. AR 401. He recommended Advil and
14 continuation of her home exercise program. He also recommended lumbar
15 diskectomy at L4-L5 and L5-S1 from the left or intradiskal electrotherapy at both
16 levels. *Id.* If she chose not to have surgical intervention, her impairment would
17 be estimated at 10% impairment of the person as a whole. *Id.*

18 The record contains little or no evidence of doctor visits, evaluations or
19 treatment between Dr. Hall’s consultation in 2001 and Dr. Sophon’s consultation
20 in 2009.² On November 19, 2009, Dr. Sophon, an orthopedic consultative
21 examiner, examined Rodriguez. AR 26, 193-98. Rodriguez’s gait was normal.
22 AR 195. She exhibited no evidence of tenderness or muscle spasm in the lumbar
23 spine, flexion was 80/90 degrees, extension was 20/30 degrees, and lateral
24 bending was 20/25 degrees bilaterally. AR 26, 195. She exhibited negative
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26 ² In the Disability Report – Adult, Rodriguez stated she was not taking any
27 medications for her conditions. AR 138. In the Disability Report – Appeal, she
28 stated she took Celebrex and Roxicet for pain in her right knee. She listed no
medication for back pain. AR 178. At the hearing, she testified that she takes a
“pill daily” for back pain, but she could not remember the name of it. AR 45.

1 straight leg raising. AR 26, 195. Her right knee range of motion was 0 to 130
2 degrees, and her left knee range of motion was 0 to 135 degrees. AR 196. Her
3 neurologic motor strength was grossly within normal limits. AR 26, 197. Dr.
4 Sophon diagnosed lumbosacral strain and treated right patellar fracture. AR 26,
5 197. He opined that Rodriguez could lift and/or carry 50 pounds frequently and
6 could stand and/or walk for 6 hours in an 8 hour day. AR 26, 197.

7 The ALJ articulated specific and legitimate reasons for discounting the
8 treating physician's opinion. *Orn*, 495 F.3d at 631-32; *Batson*, 359 F.3d at 1195
9 (ALJ did not err in rejecting treating physician's opinion unsupported by objective
10 medical findings). Rodriguez argues the ALJ should have recontacted the
11 treating physician to obtain clarification and/or additional evidence. However,
12 rejection of a treating physician's opinion does not by itself trigger a duty to
13 contact the physician for further explanation. *McLeod v. Astrue*, 640 F.3d 881,
14 885 (9th Cir. 2011). The ALJ made no finding that the evidence was ambiguous
15 or that the record was inadequate to allow for proper evaluation. See *Mayes v.*
16 *Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001) ("An ALJ's duty to develop the
17 record further is triggered only when there is ambiguous evidence or when the
18 record is inadequate to allow for proper evaluation of the evidence."). In addition,
19 as the Commissioner notes, the ALJ ordered two consultative examinations and
20 kept the record open for 30 days to allow Rodriguez to submit additional
21 evidence. AR 26, 46-47, 53-54, 193-98, 201-08; see *Tonapetyan v. Halter*, 242
22 F.3d 1144, 1150 (9th Cir. 2001) (ALJ satisfies duty to develop record by keeping
23 the record open to allow supplementation); *Reed v. Massanari*, 270 F.3d 838, 841
24 (9th Cir. 2001) ("One of the means available to an ALJ to supplement an
25 inadequate medical record is to order a consultative examination."). Under these
26 circumstances, the ALJ did not have a duty to recontact the treating physician.
27 The ALJ did not err.

28

1 **D. Severe Impairment**

2 Rodriguez contends the ALJ erred in finding her impairments not severe.

3 At step two of the sequential analysis, the claimant bears the burden of
4 demonstrating a severe, medically determinable impairment that meets the
5 duration requirement. 20 C.F.R. § 404.1520(a)(4)(ii); *Bowen v. Yuckert*, 482 U.S.
6 137, 146 n.5, 107 S. Ct. 2287, 96 L. Ed. 2d 119 (1987). To satisfy the duration
7 requirement, the severe impairment must have lasted or be expected to last for a
8 continuous period of not less than 12 months. *Id.* at 140.

9 Your impairment must result from anatomical, physiological, or
10 psychological abnormalities which can be shown by medically
11 acceptable clinical and laboratory diagnostic techniques. A physical
12 or mental impairment must be established by medical evidence
13 consisting of signs, symptoms, and laboratory findings, not only by
14 your statement of symptoms.

15 20 C.F.R. § 404.1508; 20 C.F.R. § 416.908. “[T]he impairment must be one that
16 ‘significantly limits your physical or mental ability to do basic work activities.’”³
17 *Yuckert*, 482 U.S. at 154 n.11 (quoting 20 C.F.R. § 404.1520(c)); *Smolen*, 80 F.3d
18 at 1290 (“[A]n impairment is not severe if it does not significantly limit [the
19 claimant’s] physical ability to do basic work activities.”) (citation and quotation
20 marks omitted).

21 “An impairment or combination of impairments may be found ‘not severe
22 *only if* the evidence establishes a slight abnormality that has no more than a
23 minimal effect on an individual’s ability to work.” *Webb v. Barnhart*, 433 F.3d

24
25 ³ The ability to do basic work activities includes “physical functions such as
26 walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling,”
27 “capacities for seeing, hearing, and speaking,” “understanding, carrying out, and
28 remembering simple instructions,” “use of judgment,” “responding appropriately to
supervision, co-workers, and usual work situations,” and “dealing with changes in
a routine work setting.” *Yuckert*, 482 U.S. at 168 n.6 (citation and quotation
marks omitted); *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

1 683, 686-87 (9th Cir. 2005) (emphasis in original, citation omitted). Step two is “a
2 *de minimis* screening device [used] to dispose of groundless claims” and the
3 ALJ’s finding must be “clearly established by medical evidence.” *Id.* at 687
4 (citations and quotation marks omitted).

5 The ALJ found that since October 14, 2009, the date Rodriguez filed her
6 application for supplemental security income, Rodriguez “does not have an
7 impairment or combination of impairments that has significantly limited (or is
8 expected to significantly limit) the ability to perform basic work-related activities for
9 12 consecutive months; therefore, [she] does not have a severe impairment or
10 combination of impairments.” AR 23.

11 Rodriguez argues that she has severe impairments and relies on the
12 treating physician’s October 19, 2010 opinion, her partial patellectomy and repair
13 of the right knee in 1999, and her 1999 MRI. As discussed above, the ALJ
14 articulated specific and legitimate reasons for discounting the treating physician’s
15 opinion. The remaining records Rodriguez cited show that she had right knee
16 surgery and left sided disc herniations in 1999, but provide no evidence that her
17 impairments caused a significant limitation on her ability to perform basic work-
18 related activities for 12 consecutive months after her filing date.

19 Substantial evidence supports the ALJ’s determination that Rodriguez’s
20 impairments are not severe. As discussed above, objective evidence indicated, at
21 best, that Rodriguez had good range of motion, good strength, and only
22 occasional back pain that limited only heavy moving and lifting. AR 197, 394,
23 400-01, 408. Regarding depression, substantial evidence supports the ALJ’s
24 determination that Rodriguez’s depression was not a severe impairment. On
25 November 29, 2009, Dr. Rodriguez, a psychiatric consultative examiner, found
26 that she had no severe mental impairments. AR 27, 205-06. She could perform
27 activities of daily living normally, was oriented in all spheres, and had normal
28 thought processes, thought content, speech, memory and concentration. AR 26,

1 203-04. He diagnosed major depressive disorder, in partial remission. AR 26,
2 205. Rodriguez could understand, remember and carry out simple one or two-
3 step job instructions, could do detailed and complex instructions, and was slightly
4 limited in her ability to relate and interact with supervisors, coworkers and the
5 public, maintain concentration and attention, persistence and pace, associate with
6 day-to-day work activity, adapt to the stresses common to a normal work
7 environment, maintain regular attendance and perform work activities on a
8 consistent basis, and perform work activities without special or additional
9 supervision.⁴ AR 26, 206.

10 The ALJ noted that the most recent treatment records from 2010 showed
11 no problems or complaints about Rodriguez's back or depression. AR 25-26,
12 228-32. The ALJ did not err.

13 **E. Credibility**

14 Rodriguez contends the ALJ did not properly consider her subjective
15 symptoms.

16 "To determine whether a claimant's testimony regarding subjective pain or
17 symptoms is credible, an ALJ must engage in a two-step analysis." *Lingenfelter*
18 *v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). At step one, "the ALJ must
19 determine whether the claimant has presented objective medical evidence of an
20 underlying impairment 'which could reasonably be expected to produce the pain
21 or other symptoms alleged.'" *Id.* (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344
22 (9th Cir. 1991) (en banc)). The ALJ found that Rodriguez' medically determinable
23 impairments could reasonably be expected to produce the alleged symptoms. AR
24 25.

25 "Second, if the claimant meets this first test, and there is no evidence of
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27 ⁴ Dr. Rodriguez assessed a GAF score of 60. The ALJ found the GAF
28 score of "limited evidentiary value" and inconsistent with Dr. Rodriguez'
unremarkable findings from Rodriguez's mental status examination. AR 27-28.

1 malingering, the ALJ can reject the claimant’s testimony about the severity of her
2 symptoms only by offering specific, clear and convincing reasons for doing so.”
3 *Lingenfelter*, 504 F.3d at 1036 (citation and quotation marks omitted). “In making
4 a credibility determination, the ALJ ‘must specifically identify what testimony is
5 credible and what testimony undermines the claimant’s complaints[.]’” *Greger v.*
6 *Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (citation omitted). Here, the ALJ
7 found no evidence of malingering. He found that Rodriguez’ statements
8 concerning the intensity, persistence and limiting effects of her symptoms were
9 not credible to the extent they were inconsistent with his finding that she has no
10 severe impairment or combination of impairments. AR 25.

11 In weighing credibility, the ALJ may consider factors including: the nature,
12 location, onset, duration, frequency, radiation, and intensity of any pain;
13 precipitating and aggravating factors (e.g., movement, activity, environmental
14 conditions); type, dosage, effectiveness, and adverse side effects of any pain
15 medication; treatment, other than medication, for relief of pain; functional
16 restrictions; the claimant’s daily activities; and “ordinary techniques of credibility
17 evaluation.” *Bunnell*, 947 F.2d at 346 (citing SSR 88-13) (quotation marks
18 omitted). The ALJ may consider (a) inconsistencies or discrepancies in a
19 claimant’s statements; (b) inconsistencies between a claimant’s statements and
20 activities; (c) exaggerated complaints; and (d) an unexplained failure to seek
21 treatment. *Thomas*, 278 F.3d at 958-59.

22 The ALJ found Rodriguez’ statements regarding her subjective symptoms
23 “not credible” to the extent that they were inconsistent with his findings. AR 25.
24 He discounted Rodriguez’ credibility for at least three reasons: (1)
25 inconsistencies between Rodriguez’ subjective allegations and her activities of
26 daily living; (2) lack of treatment records for back pain or depression; and (3) lack
27 of objective medical evidence supporting the degree of limitations. AR 24-25.

28 An ALJ may properly rely on inconsistencies between a claimant’s

1 allegations and his activities of daily living. *Thomas*, 278 F.3d at 958-59; *see also*
2 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (ALJ may consider
3 claimant’s daily activities as one factor in assessing credibility.). As the ALJ
4 noted, Rodriguez alleged she was unable to work because of right knee pain,
5 back pain, and chronic depression. AR 24, 44, 48. She stated that her
6 impairments affected her ability to lift, squat, bend, stand, reach, walk, sit, kneel,
7 talk, hear, climb stairs, see, memorize, complete tasks, concentrate, understand,
8 follow directions, and use her hands. AR 24, 158. She contended that she had
9 difficulty performing personal care tasks, following television programs, following
10 instructions, and handling stress and changes in routine. AR 25, 155-59. When
11 her pain level is “4-8,” she cannot “do anything [sic] stay in bed.” AR 155. The
12 ALJ found it “contradictory” that Rodriguez made her bed, cleaned her house,
13 washed dishes, watched television, read, prepared simple meals, drove a car,
14 shopped for clothes and groceries, and attended church. AR 25, 155-57.

15 The ALJ considered the absence of treatment records for Rodriguez’ back
16 pain and depression. AR 25, 44-45. An ALJ may find a claimant’s complaint
17 about disabling pain unjustified or exaggerated if the claimant fails to seek
18 treatment. *Orn*, 495 F.3d at 638; *see also Burch v. Barnhart*, 400 F.3d 676, 681
19 (9th Cir. 2005) (lack of consistent treatment may be considered in assessing
20 credibility). Regarding Rodriguez’ back pain, the medical records submitted after
21 the close of the record support Rodriguez’ testimony that she had an MRI of her
22 lumbar spine on August 16, 1999 that showed left sided disk herniations at L4-5
23 and L5-S1. AR 44, 344. The record also contains brief references to “LBP” or
24 pain in the lumbar spine in 1999 treatment records.⁵ AR 342, 393. However, as
25 the Commissioner argues, the record lacks evidence that Rodriguez sought or

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27 ⁵ “LBP” can be used as an abbreviation for low back pain. See National
28 Center for Biotechnology Information,
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2867967/> (last visited Nov. 7,
2012).

1 received treatment for her back pain between January 2001 and the alleged onset
2 date of April 1, 2007.⁶ AR 25, 394; see *supra* note 3. On January 23, 2001, Dr.
3 Hall found that Rodriguez would benefit from lumbar diskectomy at L4-L5 and L5-
4 S1 from the left or intradiskal electrotherapy at both levels, and recommended
5 continuation of NSAID's like Advil and home exercise.⁷ AR 401. The record
6 contains no further treatment records until 2010, when Rodriguez was treated for
7 a cold and gynecological problems, with no mention of back pain or depression.⁸
8 AR 228-29, 231-34. The record contains no treatment records for depression.
9 Rodriguez told Dr. Rodriguez in 2009 that she used antidepressants, Zoloft and
10 Klonopin in very low doses, prescribed by a general physician. AR 202.

11 The ALJ considered the lack of objective medical evidence to support the
12 degree of Rodriguez's claimed limitations. AR 25-28. Although lack of medical
13 evidence cannot form the sole basis for discounting pain testimony, it is a factor
14 that the ALJ can consider in his credibility analysis. *Burch*, 400 F.3d at 681.
15 Rodriguez argues that the medical records contain objective evidence to support
16 her complaints, citing the treating physician's opinion, evidence of right knee
17 surgery in 1999, and her MRI from 1999. JS 15; AR 329, 401. As discussed
18 above, the ALJ properly discounted the treating physician's opinion. In addition,
19 as discussed above, the objective evidence did not support the degree of
20 Rodriguez's claimed limitations. AR 25-28.

21
22 ⁶ According to Rodriguez' worker's compensation attorney and Rodriguez'
23 report to Dr. Hall, Rodriguez was treated with approximately three epidural steroid
injections between August 1999 and June 2000. AR 254, 397, 399.

24 ⁷ Rodriguez testified that "there wasn't money for [back surgery]" because
25 "the case wasn't won." AR 44-45. Failure to seek medical treatment cannot
26 support an adverse credibility finding when it is due to lack of funds or medical
27 coverage. *Orn*, 495 F.3d at 638. However, there is no evidence in the record
that a lack of funds prevented Rodriguez from otherwise seeing a doctor and
treating her back pain and depression.

28 ⁸ Rodriguez testified that she was going to get new x-rays of her back after
the hearing, but the record contains no such x-rays of her back. AR 49.

1 The ALJ's credibility finding is supported by substantial evidence. "If the
2 ALJ's credibility finding is supported by substantial evidence in the record, we
3 may not engage in second-guessing." *Thomas*, 278 F.3d at 959 (citing *Morgan v.*
4 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999)).

5 **IV.**

6 **ORDER**

7 IT IS HEREBY ORDERED that the decision of the Commissioner is
8 affirmed.

9 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
10 Order and the Judgment herein on all parties or their counsel.

11
12
13 DATED: November 30, 2012



ALICIA G. ROSENBERG
United States Magistrate Judge