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

JANINE R. JONES,	)	No. CV 13-1213-AS
	)	
Plaintiff,	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of the	)	
Social Security Administration,	)	
	)	
Defendant.	)	
	)	

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**PROCEEDINGS**

On July 19, 2013, Plaintiff filed a Complaint, pursuant to 42 U.S.C. §§ 405(g) and 1383(c), alleging that the Social Security Administration erred in denying her disability benefits. (Docket Entry No. 3.) On October 18, 2013, Defendant filed an Answer to the Complaint and the Certified Administrative Record ("A.R."). (Docket Entry No. 22.) The parties have consented to proceed before a United States Magistrate Judge. (Docket Entry Nos. 14, 15.) On November 18, 2013, Plaintiff filed a Brief in support of her Complaint ("Pl.'s

1 Br." ). (Docket Entry No. 24.) On December 2, 2013, Defendant filed  
2 a Brief in support of its Answer ("Def.'s Br."). On December 7,  
3 2013, Plaintiff filed a Notice of Non-Opposition, stating that she  
4 did not intend to file a reply to Defendant's Brief. The Court has  
5 taken the action under submission without oral argument. See C.D.  
6 Local R. 7-15; "Order re Procedures in Social Security Case."

7  
8 **THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS**  
9

10 "Social Security disability benefits claimants have the burden  
11 of proving disability." Bellamy v. Sec'y Health & Human Serv., 755  
12 F.3d 1380, 1380 (9th Cir. 1985). A claimant is disabled if he has  
13 the "inability to engage in any substantial gainful activity by  
14 reason of any medically determinable physical or mental  
15 impairment...which has lasted or can be expected to last for a  
16 continuous period of not less than 12 months." 42 U.S.C.  
17 § 423(d)(1)(A). In order to determine whether a claimant is  
18 disabled, the Administrative Law Judge ("ALJ") follows a five-step  
19 process set forth in 20 C.F.R. § 404.1520(a)(4). "The claimant bears  
20 the burden of proving steps one through four." Parra v. Astrue, 481  
21 F.3d 742, 746 (9th Cir. 2007).  
22

23 At step one, the ALJ must determine whether or not the claimant  
24 is actually engaged in any "substantial gainful activity," as defined  
25 by 20 C.F.R. § 404.1572. If claimant is not so engaged, the  
26 evaluation continues to step two. See 20 C.F.R. § 404.1520(a)(4)(i).  
27  
28

1           At step two, the ALJ determines whether the claimed physical or  
2 mental impairments are severe. 20 C.F.R. § 404.1520(a)(4)(ii). When  
3 determining severity, "the ALJ must consider the combined effect of  
4 all of the claimant's impairments on [his or] her ability to  
5 function, without regard to whether each alone was sufficiently  
6 severe." Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir. 1996)  
7 (citing 42 U.S.C § 423(d)(2)(B)). Impairments are considered severe  
8 unless the evidence "establishes a slight abnormality that has 'no  
9 more than a minimal effect on an individual's ability to work.'" Id.  
10 at 1290 (quoting Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir.  
11 1988)). "[I]f the ALJ concludes that the claimant does have a  
12 medically severe impairment, the ALJ proceeds to the next step in the  
13 sequence." Webb v. Barnhart, 433 F.3d 683, 686 (9th Cir. 2005); See  
14 20 C.F.R. § 404.1520(a)(4)(ii).

15  
16           At step three, the ALJ considers whether the claimant's severe  
17 impairments are disabling. 20 C.F.R. § 404.1520(a)(4)(iii). The  
18 claimant is considered disabled if his purported conditions meet or  
19 are medically equivalent to a listing found in 20 C.F.R. Part 404,  
20 Subpart P, Appendix 1. Burch v. Barnhart, 400 F.3d 676, 679 (9th  
21 Cir. 2005). "[An] impairment is medically equivalent to a listed  
22 impairment in appendix 1 if it is at least equal in severity and  
23 duration to the criteria of any listed impairment." 20 C.F.R.  
24 404.1526. "Medical equivalence must be based on medical findings[]"  
25 rather than "[a] generalized assertion" or opinion testimony  
26 regarding "functional problems." Tackett v. Apfel, 180 F.3d 1094,  
27 1100 (9th Cir. 1999) (citing 20 C.F.R. § 404.1526).

1           If the ALJ concludes that the claimant is not disabled at step  
2 three, the ALJ moves to step four and considers whether the claimant  
3 can return to his past relevant work. Burch, 400 F.3d at 679; See 20  
4 C.F.R. § 404.1520(a)(4)(iv). In order to do so, the ALJ determines  
5 claimant's Residual Functional Capacity ("RFC"). 20 C.F.R.  
6 § 404.1520(a)(4)(iv). A claimant's RFC is "what [claimant] can still  
7 do despite [claimant's] limitations," and is "based on all the  
8 relevant medical and other evidence in [the] case record." 20 C.F.R.  
9 416.945(a)(1). If the claimant's RFC dictates that he can return to  
10 his past relevant work, he is not considered disabled. Burch, 400  
11 F.3d at 679.

12  
13           If the claimant proves in step four that he cannot return to his  
14 past relevant work, the ALJ proceeds to step five. 20 C.F.R.  
15 § 404.1520(a)(4)(v). At step five "the burden of proof shifts to the  
16 Secretary to show that the claimant can do other kinds of work."  
17 Embrey v. Bowden, 849 F.2d 418, 422 (9th Cir. 1988). At this point,  
18 ALJs "can call upon a vocational expert to testify as to: (1) what  
19 jobs the claimant, given his or her [RFC], would be able to do; and  
20 (2) the availability of such jobs in the national economy." Tackett,  
21 180 F.3d at 1101. If the claimant does not have the RFC to work in  
22 any available jobs, he is considered disabled. 20 C.F.R.  
23 § 404.1520(a)(4)(v).

24  
25                           **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

26  
27           Plaintiff Janine R. Jones ("Plaintiff"), a former hairdresser,  
28 asserts disability beginning June 19, 2008, based on the following

1 alleged physical and mental impairments: anxiety and pain in both  
2 arms. (A.R. 147.) The ALJ examined the record and heard testimony  
3 from Plaintiff at the hearing on January 31, 2012. (A.R. 45-47.)  
4 Plaintiff testified that she suffers from pain in her left back,  
5 neck, shoulders, left arm, and left knee. (A.R. 45-47.)

6  
7 The ALJ applied the five-step evaluation process to determine  
8 whether Plaintiff was disabled. (A.R. 12-13.) At step one, the ALJ  
9 determined that Plaintiff was not engaged in any "substantially  
10 gainful activity." (A.R. 13.)

11  
12 At step two, the ALJ found that Plaintiff suffers from the  
13 following medically determinable impairments: obesity and  
14 degenerative joint disease of the cervical spine with neuropathy.  
15 (Id.) The ALJ concluded that Plaintiff's medically determinable  
16 impairments of depression and anxiety were nonsevere because they did  
17 not cause more than minimal limitations in her ability to perform  
18 basic work activities. (A.R. 14.)

19  
20 At step three, the ALJ determined that Plaintiff's severe  
21 impairments did not meet or equal a medical listing found in 20  
22 C.F.R. Part 404, Subpart P, Appendix 1. (A.R. 14.)

23  
24 Before proceeding to step four, the ALJ found that Plaintiff had  
25 the RFC to perform light work with the following limitations:

26 occasionally climb ramps/stairs, stoop, kneel, balance,  
27 crouch, and crawl; no climbing ladders, ropes, or  
28 scaffolds; frequent handling and fingering; avoid

1 concentrated exposure to hazardous heights and dangerous  
2 machinery; frequent overhead reaching and reaching in  
3 front; able to understand, remember, and carry out detailed  
4 tasks; no limitation interacting with the public,  
5 coworkers, and supervisors; avoid concentrated exposure to  
6 cold and heat; frequent near and far visual acuity; and  
7 frequent accommodation visually.

8 (A.R. 15.) The ALJ based the RFC finding in part on the opinion of  
9 medical expert Samuel Landau, M.D. ("Dr. Landau"), who reviewed  
10 Plaintiff's medical records and testified at the hearing as a medical  
11 expert. (A.R. 23.) Dr. Landau opined that Plaintiff was morbidly  
12 obese, had degenerative disc disease and arthritis of the neck,  
13 possible carpal tunnel syndrome in the upper extremities, and  
14 peripheral neuropathy. (A.R. 33.) Dr. Landau noted that the medical  
15 records did not prove carpal tunnel, but it was a possible diagnosis.  
16 (A.R. 33.) Additionally, Dr. Landau found that although Plaintiff  
17 tested positive for an antinuclear antibody test (ANA), she did not  
18 fulfill the criteria for a lupus diagnosis. (A.R. 34.)

19 Upon review of the record, the ALJ found that Plaintiff's  
20 medically determinable impairments could reasonably be expected to  
21 cause the alleged symptoms. (A.R. 15.) However, the ALJ also found  
22 that Plaintiff's statements "concerning the intensity, persistence,  
23 and limiting effects of these symptoms" were not credible. (A.R.  
24 15.)

25 At step four, the ALJ determined that Plaintiff was able to  
26 perform her past relevant work as a cosmetologist. (A.R. 18.) The  
27 ALJ made this determination after comparing Plaintiff's RFC with the  
28

1 requirements of her past relevant work, and hearing testimony from a  
2 vocational expert. (A.R. 18.)

3  
4 Alternatively, the ALJ found that, in addition to her past  
5 relevant work, Plaintiff was also able to perform other jobs existing  
6 in significant numbers in the national economy, such as an  
7 "electronic worker," a "ticket taker," or a "packing machine  
8 operator." (A.R. 19.)

9  
10 Accordingly, the ALJ found that Plaintiff was not disabled under  
11 42 U.S.C. § 423(d)(1)(A). (Id.)

#### 12 13 **STANDARD OF REVIEW**

14  
15 This court reviews the Administration's decision to determine  
16 if: (1) the Administration's findings are supported by substantial  
17 evidence; and (2) the Administration used proper legal standards.  
18 Smolen, 80 F.3d at 1279. "Substantial evidence is more than a  
19 scintilla, but less than a preponderance." Andrews v. Shalala, 53  
20 F.3d 1035, 1039 (9th Cir. 1995). To determine whether substantial  
21 evidence supports a finding, "a court must consider [] the record as  
22 a whole, weighing both evidence that supports and evidence that  
23 detracts from the [Commissioner's] conclusion." Reddick v. Chater,  
24 157 F.3d 715, 720 (9th Cir. 1998). As a result, "[i]f evidence can  
25 reasonably support either affirming or reversing the ALJ's  
26 conclusion, [a] court may not substitute its judgment for that of the  
27 ALJ." Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1196 (9th  
28 Cir. 2004).

1 **PLAINTIFF'S CONTENTIONS**

2  
3 Plaintiff contends that the ALJ: (1) erred in rejecting carpal  
4 tunnel syndrome as a severe impairment in step two; (2) improperly  
5 rejected the medical expert's testimony in her assessment of  
6 Plaintiff's RFC; (3) erred in her assessment of Plaintiff's  
7 credibility; and (4) erred in relying on the VE's testimony because  
8 it purportedly conflicts with the Dictionary of Occupational Titles.  
9 (Pl.'s Br. 1-10.)

10  
11 **DISCUSSION**

12  
13 After consideration of the record as a whole, the Court finds  
14 that the Commissioner's findings are supported by substantial  
15 evidence and are free from material<sup>1</sup> legal error.

16  
17 **A. Any Err in the ALJ's Finding at Step Two Was Harmless**

18  
19 Plaintiff asserts that the ALJ erred at step two in finding  
20 Plaintiff to have severe impairments only of obesity and degenerative  
21 joint disease of the cervical spine with neuropathy. (Pl.'s Br. 3.)  
22  
23  
24

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25 <sup>1</sup> The harmless error rule applies to the review of  
26 administrative decisions regarding disability. See McLeod v. Astrue,  
27 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d  
28 676, 679 (9th Cir. 2005) (stating that an ALJ's decision will not be  
reversed for errors that are harmless).



1 Plaintiff maintains that she also has an additional severe impairment  
2 of bilateral carpal tunnel syndrome.<sup>2</sup> (Id.)

3  
4 At step two, a claimant must make a threshold showing that her  
5 medically determinable impairments significantly limit her ability to  
6 perform basic work activities. See Bowen v. Yuckert, 482 U.S. 137,  
7 145 (1987); 20 C.F.R. §§ 404.1520(c), 416.920(c). "Basic work  
8 activities" refers to "the abilities and aptitudes necessary to do  
9 most jobs." 20 C.F.R. §§ 404.1521(b), 416.921(b). "An impairment or  
10 combination of impairments can be found 'not severe' only if the  
11 evidence establishes a slight abnormality that has 'no more than a  
12 minimal effect on an individual's ability to work.'" Smolen, 80 F.3d  
13 at 1290 (quoting Social Security Ruling (SSR) 85-28). "[T]he step  
14 two inquiry is a *de minimis* screening device to dispose of groundless  
15 claims." Id. (citing Bowen, 482 U.S. at 153-54). Step two findings  
16 must be based upon medical evidence. 20 C.F.R. §§ 404.1509(a)(ii);  
17 416.920(a)(ii). A claimant's own statement of symptoms alone is not  
18 enough to establish a medically determinable impairment. See 20  
19 C.F.R. §§ 404.1508, 416.908.

20  
21 The Ninth Circuit has held that when the ALJ has resolved Step  
22 Two in a claimant's favor, any error in designating specific  
23 impairments as severe does not prejudice a claimant. Burch v.  
24 Barnhart, 400 F.3d 676, 682 (9th Cir. 2005) (concluding that any  
25 error committed by the ALJ in step two was harmless because the step

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26 <sup>2</sup> Plaintiff also asserts that she suffers from degenerative  
27 joint disease of the lumbar spine. (Pl.'s Br. 3.) However, because  
28 Plaintiff does not cite any medical evidence in support of this  
alleged impairment, the Court declines to consider it.

1 was resolved in Plaintiff's favor); Rilling v. Astrue, No. CV 10-4601  
2 JCG, 2011 WL 1630771, at \*5 (C.D. Cal. Apr. 29, 2011). Because the  
3 ALJ found that Plaintiff had severe impairments, including obesity  
4 and degenerative joint disease of the cervical spine with neuropathy,  
5 the Court concludes that any error by the ALJ in failing to identify  
6 as severe Plaintiff's alleged impairment of carpal tunnel syndrome is  
7 harmless.

8  
9 **B. The ALJ's Assessment of Plaintiff's RFC is Supported By**  
10 **Substantial Evidence**

11  
12 Plaintiff contends that the ALJ's assessment of Plaintiff's RFC  
13 was not supported by substantial evidence. (Pl.'s Br. 5.) In  
14 particular, Plaintiff alleges that the ALJ improperly rejected the  
15 medical expert's testimony that Plaintiff could engage in "no  
16 forceful gripping, grasping, or twisting," and that Plaintiff would  
17 be limited to standing and walking to only 2 hours out of 8. (Pl.'s  
18 Br. 5.)

19  
20 In evaluating medical opinions, the case law and regulations  
21 distinguish among the opinions of three types of physicians: (1)  
22 those who treat the claimant (treating physicians); (2) those who  
23 examine but do not treat the claimant (examining physicians); and (3)  
24 those who neither examine nor treat the claimant (nonexamining or  
25 reviewing physicians). See 20 C.F.R. §§ 404.1502, 404.1527, 416.902,  
26 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995).  
27 Generally, the opinions of treating physicians are given greater  
28 weight than those of other physicians, because treating physicians

1 are employed to cure and therefore have a greater opportunity to know  
2 and observe the claimant. Orn v. Astrue, 495 F.3d 625, 631 (9th Cir.  
3 2007); Smolen, 80 F.3d at 1285.

4  
5 When a treating or examining doctor's opinion is not  
6 contradicted by some evidence in the record, it may be rejected only  
7 for "clear and convincing reasons." See Carmickle v. Commissioner,  
8 533 F.3d 1155, 1164 (9th Cir. 2008) (quoting Lester, 81 F.3d at 830-  
9 31). Where, as here, a treating physician's opinion is controverted  
10 by other evidence, the ALJ must provide "specific and legitimate  
11 reasons" supported by substantial evidence to properly reject it.  
12 Lester, 81 F.3d at 830-31 (citing Andrews v. Shalala, 53 F.3d 1035,  
13 1043 (9th Cir. 1995)); see also Orn, 495 F.3d at 632-33; Soc. Sec.  
14 Ruling 96-2p.

15  
16 Plaintiff saw treating physician, Dr. M. Ahluwalia, from 2006 to  
17 2009 for generalized pain. (A.R. 36.) Dr. Ahluwalia referred  
18 Plaintiff to Dr. Purnima Thakran for a neurology consult. (A.R.  
19 272.) On March 2, 2010, Dr. Thakran conducted an electrodiagnostic  
20 study of Plaintiff's upper extremities, which revealed the following  
21 diagnoses: cervical radiculopathy affecting the left C7 nerve root,  
22 bilateral carpal tunnel syndrome, and underlying distal  
23 polyneuropathy. (A.R. 275-78.) At the hearing, the ALJ asked  
24 medical expert Dr. Landau to testify about Plaintiff's medical  
25 records. See 20 C.F.R. §§ 404.1527(e) (ALJ "may also ask for and  
26 consider opinions from medical experts on the nature and severity of  
27 your impairment(s)"). According to Dr. Landau, Plaintiff's  
28 functional limitations included "no forceful gripping, grasping, or

1 twisting," and based this finding on the electrodiagnostic study.  
2 (A.R. 35, 39.)

3  
4 Plaintiff contends that the limitation "no forceful gripping,  
5 grasping, or twisting" should have been included in Plaintiff's RFC.  
6 (Pl. Br. 5.) However, Dr. Landau testified that an electrodiagnostic  
7 study alone would not justify the diagnosis because, "[a]n  
8 electrodiagnostic study does not establish a diagnosis of carpal  
9 tunnel syndrome where there is positive and negative . . . people can  
10 have carpal tunnel syndrome and have a relatively normal  
11 electrodiagnostic study and vice versa." (A.R. 39.) Accordingly,  
12 the ALJ explained that Dr. Landau's residual functional capacity  
13 assessment was too restrictive with respect to Plaintiff's  
14 manipulative limitations because Plaintiff only had possible carpal  
15 tunnel syndrome. This opinion was also supported by the agency's  
16 medical consultant, Dr. Keith Wahl, who did not consider carpal  
17 tunnel syndrome to be a severe medically determinable impairment.  
18 (A.R. 245-49; 316-18.)

19  
20 The ALJ also rejected Dr. Landau's testimony that Plaintiff's  
21 functional limitations should include a restriction to standing and  
22 walking only 2 hours out of 8. (Pl.'s Br. 5-6.) The ALJ rejected  
23 this testimony because Plaintiff underwent two recent physical  
24 examinations in January 2012 which produced normal results. (A.R.  
25 16.) Plaintiff visited Dr. Bikramjit Ahluwalia on January 3, 2012  
26 and Dr. Mohinder Ahuwalia on January 24, 2012. (A.R. 391-92; 420-  
27 21.) Although Plaintiff complained of pain in her neck and shoulder,  
28 and numbness in her left toe, the ALJ pointed out that nothing in the

1 record indicated Plaintiff's need for a back brace or cane. (A.R.  
2 17.)

3  
4 Accordingly, the ALJ provided "specific and legitimate" reasons  
5 supported by substantial evidence for rejecting the expert's  
6 testimony regarding Plaintiff's functional limitations. Lester, 81  
7 F.3d at 830-31.

8  
9 **C. The ALJ Provided Clear and Convincing Reasons for**  
10 **Discounting Plaintiff's Credibility**

11  
12 Plaintiff also contends that the ALJ failed to consider her  
13 subjective complaints and properly assess her credibility. (Pl.'s  
14 Br. 8.) In particular, Plaintiff claims that the ALJ rejected  
15 Plaintiff's credibility only on the basis that her complaints lacked  
16 objective medical evidence.

17  
18 An ALJ's assessment of a claimant's credibility and the severity  
19 of his or her symptoms is entitled to "great weight." See Anderson  
20 v. Sullivan, 914 F.2d 1121, 1124 (9th Cir. 1990); Nyman v. Heckler,  
21 779 F.2d 528, 531 (9th Cir. 1985). "[T]he ALJ is not required to  
22 believe every allegation of disabling pain, or else disability  
23 benefits would be available for the asking, a result plainly contrary  
24 to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104, 1112  
25 (9th Cir. 2012).

26  
27 In evaluating a claimant's subjective symptom testimony, the ALJ  
28 engages in a two-step analysis. Lingenfelter v. Astrue,

1 504 F.3d 1028, 1035-36 (9th Cir. 2007). "First, the ALJ must  
2 determine whether the claimant has presented objective medical  
3 evidence of an underlying medical impairment which could reasonably  
4 be expected to produce the pain or other symptoms alleged." Id.  
5 at 1036 (internal quotations and citation omitted). If such  
6 objective medical evidence exists, the ALJ may not reject the  
7 claimant's testimony "simply because there is no showing that the  
8 impairment can reasonably produce the *degree* of symptom alleged."  
9 Smolen, 80 F.3d at 1282 (emphasis in original). Instead, in finding  
10 the claimant's subjective complaints not credible, the ALJ must make  
11 "specific, cogent" findings that support the conclusion. Lester v.  
12 Chater, 81 F.3d 821, 834 (9th Cir. 1995) (quoting Rashad v. Sullivan,  
13 903 F.2d 1229, 1231 (9th Cir. 1990)). Absent affirmative evidence of  
14 malingering, the ALJ's reasons for rejecting the claimant's testimony  
15 must be "clear and convincing." Lester, 81 F.3d at 834.

#### 16 17 Objective Medical Evidence

18  
19 While a claimant's testimony regarding her symptoms "cannot be  
20 rejected on the sole ground that it is not fully corroborated by  
21 objective medical evidence, the medical evidence is still a relevant  
22 factor in determining the severity of the claimant's pain and its  
23 disabling effects." Rollins v. Massanari, 261 F.3d 853, 857 (9th  
24 Cir. 2001) (citing 20 C.F.R. § 404.1592(c)(2)); Burch v. Barnhart,  
25 400 F.3d 676, 681 (9th Cir. 2005) ("Although lack of medical evidence  
26 cannot form the sole basis for discounting pain testimony, it is a  
27 factor that the ALJ can consider in his credibility analysis.").

1 In addition to relying on the medical expert's testimony (e.g.,  
2 regarding the electrodiagnostic study which did not prove carpal  
3 tunnel syndrome), the ALJ considered Plaintiff's consultative exam  
4 with Dr. Bryan To in connection with a previous application for  
5 social security benefits. During this consult, a back examination  
6 revealed no true findings of nerve root irritation, negative straight  
7 leg raise in the supine and sitting positions bilaterally, and  
8 painful, but normal range of motion. (A.R. 15; 199.) Moreover, in  
9 regard to Plaintiff's joint pain, Dr. To found no evidence of  
10 deformity, swelling, or tenderness of the joints, and normal range of  
11 motion. (A.R. 15-16; 199.) Accordingly, Dr. To found Plaintiff was  
12 only limited to medium work. (A.R. 199-200.)

13  
14 Moreover, although Plaintiff reported the need for a back brace  
15 and cane, the ALJ concluded that the objective evidence did not  
16 support the need for either assistive device. Plaintiff's MRI exam  
17 from March 2010 showed degenerative disk and joint disease, which  
18 caused only mild central canal stenosis and no significant spinal  
19 cord or root compression. (A.R. 16; 302-304.) On May 11, 2010, Dr.  
20 Ali Mesiwala performed a surgical consultation and concluded that  
21 surgery was unnecessary. (A.R. 16; 300.) Plaintiff attended  
22 physical therapy, and testified at the hearing that she takes vicodin  
23 for pain. (A.R. 43, 286-296.) However, Plaintiff has not pointed to  
24 evidence in the record documenting who prescribed Vicodin, for how  
25 long, or the indications for prescribing those medications. See  
26 Higinio v. Colvin, No. EDCV 12-1820 AJW, 2014 WL 47935, at \*5 (C.D.  
27 Cal. Jan. 7, 2014) (treatment as a whole was conservative despite  
28 claimant's use of narcotic pain medications).

1           Daily Activities

2  
3           The ALJ also relied in part on Plaintiff's activities of daily  
4 living in finding that Plaintiff's testimony lacked credibility.

5  
6           A claimant's ability to perform a range of daily activities can  
7 be used to assess his credibility. See 20 C.F.R. §§ 404.1529(a),  
8 416.929(a); Molina v. Astrue, 674 F.3d 1104, 1113 (9th Cir. 2012)  
9 ("[T]he ALJ may discredit a claimant's testimony when the claimant  
10 reports participation in everyday activities indicating capacities  
11 that are transferrable to a work setting."). However, "the mere fact  
12 that a plaintiff has carried on certain daily activities, such as  
13 grocery shopping, driving a car, or limited walking for exercise,  
14 does not in any way detract from her credibility as to her overall  
15 disability." Vertigan v. Halter, 260 F.3d 1044, 1050 (9th  
16 Cir. 2001). Instead, the relevant inquiry is whether the skills  
17 involved in the daily activities could be transferred to the  
18 workplace. See Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005).

19  
20  
21           Here, the ALJ pointed out that Plaintiff worked part time "as  
22 recently as November 2010." (A.R. 16.) Plaintiff testified that for  
23 several months out of the year, she worked five to six days a week as  
24 a hairdresser, doing braids that required on average eight to nine  
25 hours of work. (A.R. 61.) On her days off, Plaintiff would take  
26 care of other business and check on her daughter in school. (A.R.  
27 61.) Although this work did not equate to substantial gainful  
28 activity, the ALJ properly relied on it to show that the Plaintiff



1 was engaging in activity inconsistent with her alleged disability.  
2 See Lingenfelter v. Astrue, 504 F.3d 1028, 1040 (9th Cir. 2007); see  
3 also Helton v. Colvin, No. C13-382-RAJ, 2013 WL 6159313, at \*11 (W.D.  
4 Wash. Nov. 25, 2013) (finding that the ALJ reasonably concluded  
5 plaintiff's recent work as a call center employee undercut her claims  
6 regarding the severity of her impairments and their impact on her  
7 ability to work).

8  
9 Accordingly, the ALJ permissibly evaluated Plaintiff's  
10 credibility, taking into account the lack of corroborating medical  
11 evidence and Plaintiff's daily activities. The Court finds that the  
12 ALJ has stated "clear and convincing" reasons for discounting  
13 Plaintiff's credibility.

14  
15 **D. The ALJ Permissibly Relied on Vocational Expert Testimony**

16  
17 The ALJ called Troy Scott to testify as a vocational expert.  
18 (A.R. 62.) The ALJ then posed a series of hypothetical questions to  
19 the VE to determine whether a person with Plaintiff's limitations  
20 could perform her past relevant work as a cosmetologist (Step Four)  
21 or alternative work available in the economy (Step Five). (A.R. 62-  
22 71.)

23  
24 The first hypothetical contained the following limitations at  
25 the light exertional level:

26 occasional climbing ramps and stairs, stooping, kneeling,  
27 balancing, crouching, and crawling but no climbing ladders,  
28 ropes or scaffolds; frequent handling and fingering;

1 avoidance of concentrated exposure to hazardous heights and  
2 dangerous machinery; frequent overhead reaching and  
3 reaching in front; able to understand, remember, and carry  
4 out detailed tasks; no limitations in interacting with the  
5 public, co-workers, or supervisors; avoidance of  
6 concentrated exposure to cold and heat; frequent near and  
7 far visual acuity; and frequent accommodation visually.

8 (A.R. 63.) The VE testified that a hypothetical person with these  
9 limitations could not only perform the past work as a cosmetologist,  
10 but various jobs available in the national economy, including  
11 electronics worker, ticket taker, and packing machine operator.

12 (A.R. 64-65.)

13 The ALJ based his second hypothetical on the medical expert, Dr.  
14 Landau's testimony. The second hypothetical included the following  
15 limitations:

16 able to stand and/or walk up to two hours in an eight-hour  
17 work day; sit with no limitations; lift and carry 10 pounds  
18 frequently and 20 pounds occasionally; occasionally stoop  
19 and bend; able to climb stairs but cannot climb ladders,  
20 work at heights, or balance; cannot do forceful grasping,  
21 gripping, or twisting; frequent fine manipulation, such as  
22 keyboarding, and gross manipulation, such as opening  
23 drawers and carrying folders; can't work above shoulder  
24 level on the left side but no limitations on the right;  
25 can't squat, kneel, crouch, crawl, or jump . . .  
26 occasionally operate foot pedals and controls. And also  
27 cannot operate motor vehicles, be responsible for the  
28 safety of others, work around heights or around dangerous  
machinery and is limited to simple, repetitive tasks.

(A.R. 64-65.) The VE testified that a hypothetical person with these  
further limitations would not be able to perform the past work of the  
Plaintiff as a cosmetologist. (A.R. 65.) However, the VE also

1 testified that the occupations available in the national economy for  
2 the first hypothetical would also apply to the second hypothetical.  
3 (A.R. 65.) The ALJ specifically asked the VE whether these jobs  
4 would still apply with the standing and walking limitation of 2 hours  
5 out of 8. (A.R. 65-66.) The VE responded in the affirmative,  
6 although eroded approximately 50% of the parking machine operator  
7 positions, which would not be available with that standing/walking  
8 limitation. (A.R. 66.)

9  
10 Plaintiff contends that there is a DOT inconsistency in the  
11 ALJ's finding that Plaintiff can perform the occupations of  
12 electronics worker, ticket taker, and packing machine operator.  
13 (Pl.'s Br. 9.) In particular, Plaintiff maintains that the  
14 "testimony on the part of the vocational expert is directly  
15 inconsistent with the Dictionary of Occupational Titles which lists  
16 these occupations as light occupations contemplating the ability to  
17 stand and/or walk up to 6 hours out of an 8 hour work day." (Pl.'s  
18 Br. 9.)

19  
20 Plaintiff's contention lacks merit because no material conflict  
21 exists between the vocational expert's testimony and the job  
22 requirements in the DOT. The DOT classifies the jobs of electronics  
23 worker, ticket taker, and packing machine operator as light work.  
24 "The *full range* of light work requires standing and walking, off and  
25 on, for a total of approximately 6 hours of an 8-hour workday." 20  
26 C.F.R. §§ 404.1567(b), 416.967(b); SSR 83-10, 1983 WL 31251, at \*6  
27 (emphasis added). The DOT does not require six hours of standing  
28 and/or walking for *all* jobs classified as light work, it merely

1 describes the activities that would be required of a person that is  
2 able to perform the *full range* of light work. The ALJ in this case  
3 found that Plaintiff's limitations, including the standing and  
4 walking limitations, did not allow her to perform the full range of  
5 light work. (A.R. 14-15; see also Boster v. Comm'r, Soc. Sec.  
6 Admin., No. CV 07-30-E-LMB, 2008 WL 754275, at \*4 (D. Idaho Mar. 19,  
7 2008) ("[T]here will be instances where a claimant's residual  
8 functional capacity will not fit precisely within one of the  
9 exertional categories of work.") (citation omitted).)

10  
11 "The DOT lists maximum requirements of occupations as generally  
12 performed, not the range of requirements of a particular job as it is  
13 performed in specific settings. A [vocational expert] . . . may be  
14 able to provide more specific information about jobs or occupations  
15 than the DOT." SSR 00-4P, 2000 WL 1898704, at \*3. The VE did not  
16 base her testimony on a hypothetical individual that was capable of  
17 performing the full range of light work. On the contrary, the expert  
18 considered the additional standing/walking limitations provided in  
19 the second hypothetical, and eroded the number of jobs available to  
20 an individual with those limitations. (A.R. 65-66.)

21  
22 Moreover, the ALJ asked the VE whether the jobs were consistent  
23 with the DOT, and the VE answered in the affirmative. (A.R. 67.)  
24 Thus, the ALJ properly relied on the VE's testimony because the  
25 hypothetical presented to the VE considered all of the claimant's  
26 limitations that were supported by the record. See Thomas v.  
27 Barnhart, 278 F.3d 947, 956 (9th Cir. 2002) (considering VE testimony  
28 reliable if the hypothetical posed includes all of claimant's

1 functional limitations); Bayliss v. Barnhart, 427 F.3d 1211, 1218  
2 (9th Cir. 2005) ("A VE's recognized expertise provides the necessary  
3 foundation for his or her testimony.").

4  
5 **ORDER**

6  
7 For all of the foregoing reasons, this Court affirms the  
8 decision of the Administrative Law Judge.

9  
10 LET JUDGMENT BE ENTERED ACCORDINGLY.

11  
12 Dated: April 1, 2015.

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14  
15 \_\_\_\_\_/s/\_\_\_\_\_  
16 ALKA SAGAR  
17 UNITED STATES MAGISTRATE JUDGE  
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**NOTICE**

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2  
3       Reports and Recommendations are not appealable to the Court of  
4 Appeals, but may be subject to the right of any party to file  
5 objections as provided in the Local Rules Governing the Duties of  
6 Magistrate Judges and review by the District Judge whose initials  
7 appear in the docket number. No notice of appeal pursuant to the  
8 Federal Rules of Appellate Procedure should be filed until entry of  
9 the judgment of the District Court.