

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

LUPE GONZALES SOLIS,
Plaintiff,

v.
NANCY A. BERRYHILL, Deputy
Commissioner of Operations of Social
Security,
Defendant.

Case No. ED CV 17-01656-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Lupe Gonzales Solis (“Plaintiff”) challenges the Commissioner’s denial of her application for disabled widow’s benefits (“DWB”). For the reasons stated below, the decision of the Commissioner is AFFIRMED.

II. PROCEEDINGS BELOW

On December 5, 2013, Plaintiff applied for DWB alleging disability beginning March 31, 2002. (Administrative Record (“AR”) 62-63, 71.) Her application was denied initially on March 4, 2014 and upon reconsideration. (AR 82, 90-94.) Plaintiff filed a written request for hearing, and a hearing was held on May 4, 2016. (AR 41; *see* AR 97.) Plaintiff, unrepresented by counsel, appeared

1 and testified, along with an impartial vocational expert (“VE”). (AR 43-61.) On
2 May 24, 2016, the Administrative Law Judge (“ALJ”) found that Plaintiff had not
3 been under a disability, pursuant to the Social Security Act,¹ from March 31, 2002
4 through the date of decision. (AR 36.) The ALJ’s decision became the
5 Commissioner’s final decision when the Appeals Council denied Plaintiff’s request
6 for review. (AR 1.) Plaintiff filed this action on August 16, 2017. (Dkt. No. 1.)

7 The ALJ followed a five-step sequential evaluation process to assess whether
8 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
9 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
10 in substantial gainful activity since March 31, 2002, the alleged onset date
11 (“AOD”). (AR 30.) At **step two**, the ALJ found that Plaintiff has the following
12 severe impairments: back pain; migraines; osteoporosis; insomnia; pain in joints;
13 thyroid issue; and hip pain. (*Id.*) At **step three**, the ALJ found that Plaintiff “does
14 not have an impairment or combination of impairments that meets or medically
15 equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P,
16 Appendix 1.” (AR 32.)

17 Before proceeding to step four, the ALJ found that Plaintiff has the residual
18 functional capacity (“RFC”) to:

19 [P]erform sedentary work . . . specially as follows: the claimant can
20 lift, carry, push, or pull 10 pounds occasionally and less than 10
21 pounds frequently; she can stand and/or walk for 2 hours out of an 8-
22 hour workday with normal breaks; she can sit for 6 hours out of an 8-
hour workday with normal breaks; and postural activities can be
performed on an occasional basis.

23 (*Id.*) At **step four**, the ALJ found that Plaintiff was capable of performing past
24 relevant work as an escrow clerk, and thus the ALJ did not continue to step five.
25

26 ¹ Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 (AR 35-36.) Accordingly, the ALJ determined that Plaintiff had not been under a
2 disability from the AOD through the date of decision. (AR 36.)

3 **III. STANDARD OF REVIEW**

4 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
5 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
6 supported by substantial evidence and if the proper legal standards were applied.
7 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’
8 means more than a mere scintilla, but less than a preponderance; it is such relevant
9 evidence as a reasonable person might accept as adequate to support a conclusion.”
10 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
11 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
12 evidence requirement “by setting out a detailed and thorough summary of the facts
13 and conflicting clinical evidence, stating his interpretation thereof, and making
14 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

15 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
16 specific quantum of supporting evidence. Rather, a court must consider the record
17 as a whole, weighing both evidence that supports and evidence that detracts from
18 the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
19 2001) (citations and internal quotation marks omitted). “‘Where evidence is
20 susceptible to more than one rational interpretation,’ the ALJ’s decision should be
21 upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing
22 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at
23 882 (“If the evidence can support either affirming or reversing the ALJ’s
24 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court
25 may review only “the reasons provided by the ALJ in the disability determination
26 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*
27 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d
28 871, 874 (9th Cir. 2003)).

1 ///

2 **IV. DISCUSSION**

3 Plaintiff raises the following issues for review: (1) whether the ALJ properly
4 considered the medical evidence in assessing Plaintiff’s RFC; (2) whether the ALJ
5 properly considered Plaintiff’s subjective statements and testimony; and
6 (3) whether the ALJ properly considered relevant vocational evidence at step four.
7 (Joint Submission (“JS”) 4-5.) For the reasons below, the Court affirms.

8 **A. The ALJ Properly Assessed Plaintiff’s Subjective Statements And**
9 **Testimony**²

10 Plaintiff argues that the ALJ failed to properly consider her subjective
11 symptom testimony. (See JS 20-23.) The Commissioner argues that the ALJ’s
12 evaluation of Plaintiff’s testimony is supported by substantial evidence. (See JS 23,
13 26.)

14 **1. Plaintiff’s Testimony**

15 At the hearing, Plaintiff stated that she was 58 years old and had a high
16 school education. (AR 46.) Plaintiff’s last job was in 2002 as a financial
17 representative who handled escrow accounts. (AR 47.) At that job, she worked at a
18 computer while sitting down. (AR 47-48.) Plaintiff explained that she had not
19 worked in the past 14 years because her husband’s job transferred them to different
20 states. (AR 48.) Plaintiff’s husband passed away in September 2013. (*Id.*)

21 Plaintiff testified that she has been unable to work for the past five or six
22 years because her lower back has “gotten worse.” (See AR 49-50.) Plaintiff
23 explained that she feels pain and stretching, and her lower back and spine area
24 clicks when she turns. (AR 50.) Plaintiff also asserted that she has problems with
25 her left hip and her neck. (AR 49.) Plaintiff stated that her neck gets stiff and sore,

26 _____
27 ² Because subjective symptom testimony is one factor that the ALJ must consider
28 when assessing a claimant’s RFC, the Court addresses this issue first before
discussing the overall RFC determination.

1 and sometimes she cannot move it. (AR 50.)

2 Plaintiff testified that she suffers from migraines twice a week. (AR 51.)
3 Her migraines last for about 20 to 30 minutes, and she also “[has] the aura that
4 comes with it.” (*Id.*) When that happens, Plaintiff’s eyesight gradually “blurs
5 completely” and gradually returns. (AR 54.) Plaintiff takes medication to regulate
6 her migraines and “[t]o stop them from coming that often.” (AR 51.) Plaintiff
7 explained that she used to get them three or four times a week. (*Id.*)

8 Plaintiff stated that she takes medication for osteoporosis and osteopenia.
9 (*Id.*) Plaintiff testified that she has trouble sitting and that her back was hurting
10 during the hearing. (AR 51-52.) Plaintiff asserted that she can generally sit for
11 about 20 minutes without serious pain. (AR 52.) She also has trouble standing and
12 walking more than 45 to 60 minutes. (*Id.*)

13 Plaintiff did not know how much weight she could lift without hurting
14 herself, but she stated that she could lift one gallon of milk. (*Id.*)

15 Plaintiff testified that during the day, she gets up, showers, and “do[es]
16 whatever [she has] to do” before moving on with the day. (*Id.*) Plaintiff’s
17 grandchildren, ages 10 and 13, are also at her home. (AR 52-53.) Plaintiff asserted
18 that her son cares for her financially. (AR 53.)

19 Plaintiff testified that she could not physically do the work she did 16 years
20 ago. (*Id.*) Plaintiff explained that she cannot sit for eight hours a day anymore and
21 has to lie down after a few hours. (AR 53-54.) Plaintiff stated that she lies down
22 for about a half hour to an hour at a time to relieve her back, and she would require
23 additional breaks at work to do this. (AR 54.)

24 Plaintiff explained that her daily medications “[t]emporarily” help her back,
25 hip, and neck for “a few hours.” (AR 55.) Plaintiff also constantly changes her
26 medication for hypothyroidism, which is “pretty much controlled.” (AR 55-56.)

27 Plaintiff stated that “it’s been hard” since her husband passed away, and she
28 cannot sleep some nights. (AR 55.)

1 ///

2 **2. Applicable Legal Standards**

3 “In assessing the credibility of a claimant’s testimony regarding subjective
4 pain or the intensity of symptoms, the ALJ engages in a two-step analysis.” *Molina*
5 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
6 586, 591 (9th Cir. 2009)). “First, the ALJ must determine whether the claimant has
7 presented objective medical evidence of an underlying impairment which could
8 reasonably be expected to produce the pain or other symptoms alleged.” *Treichler*
9 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting
10 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the
11 ALJ does not find evidence of malingering, the ALJ must provide specific, clear
12 and convincing reasons for rejecting a claimant’s testimony regarding the severity
13 of his symptoms. *Id.* The ALJ must identify what testimony was found not
14 credible and explain what evidence undermines that testimony. *Holohan v.*
15 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). “General findings are
16 insufficient.” *Lester*, 81 F.3d at 834.

17 **3. Discussion**

18 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
19 “medically determinable impairments could reasonably be expected to cause the
20 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,
21 persistence and limiting effects of these symptoms are not entirely consistent with
22 the medical evidence and other evidence in the record.” (AR 33.) The ALJ relied
23 on the following reasons: (1) routine and conservative treatment; (2) activities of
24 daily living; and (3) lack of supporting objective medical evidence. (*See* AR 33-
25 35.) No malingering allegation was made, and therefore the ALJ’s reasons must be
26 “clear and convincing.”

27 **a. Reason No. 1: Routine and Conservative Treatment**

28 An ALJ may discount a claimant’s credibility based on routine and

1 conservative treatment. *See Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007)
2 (“[E]vidence of ‘conservative treatment’ is sufficient to discount a claimant’s
3 testimony regarding severity of an impairment.”); *see also Meanel v. Apfel*, 172
4 F.3d 1111, 1114 (9th Cir. 1999) (rejecting a plaintiff’s complaint “that she
5 experienced pain approaching the highest level imaginable” as “inconsistent with
6 the ‘minimal, conservative treatment’ that she received”).

7 The ALJ observed that medications “have been relatively effective in
8 controlling” Plaintiff’s symptoms. (AR 34; *see* AR 33.) In August 2012, Plaintiff
9 reported that “Tylenol with codeine [was] working well for the acute headaches.”
10 (AR 255.) In September 2012, Plaintiff reported that after 4 weeks of taking
11 Verapamil, a hypertension medication, her migraines—which she previously got
12 about twice a day—began occurring only two or three times a week and became
13 less severe. (AR 258.) Plaintiff also took Flexeril, a muscle relaxant, which helped
14 with her headaches and helped her sleep. (*Id.*)

15 For Plaintiff’s left hip, she received anti-inflammatory medication, a steroid
16 injection, and a non-steroid topical gel after icing and exercises previously helped
17 her symptoms. (AR 283, 289.) In March 2015, Plaintiff was referred for additional
18 physical therapy and electrotherapy. (AR 280.)

19 Because Plaintiff’s treatment primarily consisted of pain medication without
20 evidence of worsening, the ALJ permissibly discounted Plaintiff’s credibility based
21 on her conservative treatment plan. *See Warre v. Comm’r of Soc. Sec. Admin.*, 439
22 F.3d 1001, 1006 (9th Cir. 2006) (“Impairments that can be controlled effectively
23 with medication are not disabling for the purpose of determining eligibility for SSI
24 benefits.”); *see also Ryan*, 528 F.3d at 1198 (an ALJ’s decision should be upheld
25 “[w]here evidence is susceptible to more than one rational interpretation”).

26 The Court finds that this reason is a clear and convincing reason, supported
27 by substantial evidence, to discount Plaintiff’s credibility.

28 ///

1 ///

2 **b. Reason No. 2: Activities of Daily Living**

3 As part of the credibility determination, the ALJ may consider
4 inconsistencies between the claimant's testimony and his or her daily activities. *See*
5 *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997); *Tonapetyan v. Halter*,
6 242 F.3d 1144, 1148 (9th Cir. 2001). Inconsistencies between symptom allegations
7 and daily activities may act as a clear and convincing reason to discount a
8 claimant's credibility. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir.
9 2008); *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991). But a claimant need
10 not be utterly incapacitated to obtain benefits. *Fair v. Bowen*, 885 F.2d 597, 603
11 (9th Cir. 1989). "If a claimant is able to spend a substantial part of his day engaged
12 in pursuits involving the performance of physical functions that are transferable to a
13 work setting, a specific finding as to this fact may be sufficient to discredit a
14 claimant's allegations." *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600
15 (9th Cir. 1999); *accord Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001).

16 The ALJ noted that Plaintiff "described daily activities that are not limited to
17 the extent one would expect" in light of Plaintiff's complaints of disabling
18 symptoms. (AR 34.) The ALJ observed that Plaintiff described showering, eating
19 meals, walking, caring for her grandchildren for three hours a day, feeding and
20 taking care of her dog and birds, preparing her own meals, doing laundry, driving,
21 and cleaning her home. (AR 31.) The ALJ therefore determined that Plaintiff's
22 "ability to participate in such activities" is inconsistent with her statements about
23 the intensity, persistence, and limiting effects of her symptoms (AR 34) and
24 properly discounted her testimony. *See Molina*, 674 F.3d at 1112 (the ALJ may
25 consider "whether the claimant engages in daily activities inconsistent with the
26 alleged symptoms" (quoting *Lingenfelter*, 504 F.3d at 1040)).

27 The Court finds that this reason is a clear and convincing reason, supported
28 by substantial evidence, to discount Plaintiff's credibility.

1 ///

2 **a. Reason No. 3: Lack of Supporting Objective Medical**
3 **Evidence**

4 The lack of supporting objective medical evidence cannot form the sole basis
5 for discounting testimony, but it is a factor that the ALJ may consider in making a
6 credibility determination. *Burch*, 400 F.3d at 681; *Rollins v. Massanari*, 261 F.3d
7 853, 857 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)).

8 The ALJ accurately summarized Plaintiff’s medical records, noting that
9 “physical examinations were frequently unremarkable” with no acute distress. (AR
10 34.) A December 2012 bone density test revealed osteoporosis, and a February
11 2016 bone density test revealed osteoporosis of the neck and lumbar spine. (AR
12 265, 298.) The ALJ noted that Plaintiff’s examinations sometimes showed mild
13 back tenderness to palpation over the lumbar region and left hip, but Plaintiff
14 usually had full range of motion in those areas. (AR 34.) No significant motor
15 strength issues or gait abnormalities were noted. (*Id.*; *see* AR 252, 255, 258-59,
16 267-72, 284, 288-89.) And as discussed above, the ALJ observed that medications
17 “have been relatively effective in controlling the claimant’s symptoms.” (AR 34.)

18 Overall, the ALJ determined that “the objective medical evidence regarding
19 [Plaintiff’s] impairments was generally unremarkable.” (*Id.*) Although Plaintiff’s
20 treatment records may be interpreted in more than one way, the evidence can
21 rationally support the ALJ’s determination. Accordingly, the Court should uphold
22 his interpretation of the evidence. *See Ryan*, 528 F.3d at 1198; *Robbins*, 466 F.3d
23 at 882.

24 **B. The RFC Determination Is Supported By Substantial Evidence**

25 The ALJ is responsible for assessing a claimant’s RFC “based on all of the
26 relevant medical and other evidence.” 20 CFR §§ 404.1545(a)(3), 404.1546(c); *see*
27 *Robbins*, 466 F.3d at 883 (citing Soc. Sec. Ruling 96-8p (July 2, 1996), 1996 WL
28 374184, at *5). In doing so, the ALJ may consider any statements provided by

1 medical sources, including statements that are not based on formal medical
2 examinations. See 20 CFR §§ 404.1513(a), 404.1545(a)(3). An ALJ’s
3 determination of a claimant’s RFC must be affirmed “if the ALJ applied the proper
4 legal standard and his decision is supported by substantial evidence.” *Bayliss v.*
5 *Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005); accord *Morgan*, 169 F.3d at 599.

6 In determining Plaintiff’s RFC, the ALJ “considered all symptoms and the
7 extent to which these symptoms can reasonably be accepted as consistent with the
8 objective medical evidence and other evidence . . . [and] also considered opinion
9 evidence” in accordance with social security regulations. (AR 32.)

10 Plaintiff contends that the ALJ failed to properly consider the effect that her
11 migraines would have on her ability to work. (JS 5-6.) However, as discussed
12 above, the ALJ considered the medical evidence and found that Plaintiff’s
13 allegations were inconsistent with the conservative treatment that effectively
14 controlled her symptoms. (See AR 33-34.)

15 Plaintiff also contends that the ALJ failed to properly consider Plaintiff’s
16 anxiety and depression. (JS 11.) The ALJ determined that Plaintiff’s mild anxiety
17 and depression were “nonsevere” because they “do not cause more than minimal
18 limitation in [Plaintiff’s] ability to perform basic mental work activities.” (AR 31.)
19 The ALJ noted that Plaintiff had no mental health treatment, no history of
20 psychiatric hospitalization, and no record of seeking treatment with a counselor or
21 mental health professional. (*Id.*) The ALJ also observed that, despite a referral to a
22 support group for grieving (*see* AR 270), there is no indication that Plaintiff ever
23 attended the group. (AR 31.) Although Plaintiff was diagnosed with anxiety and
24 major depression (*see* AR 267-71, 288), a mere diagnosis of an impairment—or
25 even treatment for it—is insufficient to establish severity at step two. *See Harvey v.*
26 *Colvin*, No. CV 12-2507-MAN, 2013 WL 3899282, at *5 (C.D. Cal. July 29, 2013)
27 (citing *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993)). Moreover, in her
28 application, Plaintiff did not allege any impairment related to anxiety or depression.

1 (AR 65; *see* AR 73.)

2 ///

3 Finally, Plaintiff contends that the ALJ erred in evaluating the opinion of
4 treating physician Agnes Quion, M.D., instead giving greater weight to the opinions
5 of the non-examining state agency reviewing physicians. (JS 12.) The ALJ must
6 provide “clear and convincing” reasons to reject the ultimate conclusions of a
7 treating or examining physician. *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir.
8 1988); *Lester*, 81 F.3d at 830-31. When a treating or examining physician’s
9 opinion is contradicted by another opinion, the ALJ may reject it only by providing
10 specific and legitimate reasons supported by substantial evidence in the record.
11 *Orn*, 495 F.3d at 633; *Lester*, 81 F.3d at 830; *Carmickle v. Comm’r, Soc. Sec.*
12 *Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008).

13 In an August 2015 statement, Dr. Quion opined that Plaintiff could stand and
14 walk less than 2 hours during an 8-hour day and sit about 2 hours during an 8-hour
15 day, with a 15-minute break to walk around every 30 minutes. (AR 291-92.) Dr.
16 Quion also indicated that Plaintiff would need to lie down at unpredictable intervals
17 twice a day. (AR 292.) Dr. Quion stated that these limitations were due to left hip
18 arthritis, bilateral knee arthritis, bilateral shoulder arthritis, and degenerative
19 arthritis in Plaintiff’s mid- and lower-back and neck. (*Id.*) The ALJ assigned
20 this opinion “little weight,” finding it unsupported by Plaintiff’s mild and standard
21 treatment and minimal clinical findings. (AR 35.) The ALJ also noted an
22 inconsistency between Dr. Quion’s assertion that Plaintiff’s limitations were due to
23 arthritis and her treating notes, which did not mention arthritis. (*Id.*; *see* AR 267-
24 72.) The ALJ properly discounted Dr. Quion’s opinion on this basis. *See Valentine*
25 *v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 692-93 (9th Cir. 2009) (finding that a
26 contradiction between a physician’s opinion and his own treatment notes is a
27 specific and legitimate reason to reject that opinion).

28 Instead, the ALJ gave “great weight” to the opinions of the state agency

1 medical consultants who reviewed Plaintiff’s case record and understood the
2 evidentiary requirements of social security disability programs. (AR 34.) The ALJ
3 found their opinions to be consistent with the record as a whole. (AR 34-35.) The
4 ALJ was therefore permitted to assign great weight to these opinions. *See Morgan*,
5 169 F.3d at 600 (“Opinions of a nonexamining, testifying medical advisor may
6 serve as substantial evidence when they are supported by other evidence in the
7 record and are consistent with it.”); *Ruiz v. Colvin*, 638 F. App’x 604, 606 (9th Cir.
8 2016) (finding that the ALJ did not err in giving the greatest weight to
9 nonexamining state agency medical consultants because “the ALJ found their
10 opinions consistent with the greater medical record, progress and treating notes, and
11 [the plaintiff]’s description of her daily activities”).

12 In sum, the Court finds that the ALJ’s RFC assessment is supported by
13 substantial evidence. *See Arrieta v. Astrue*, 301 F. App’x 713, 715 (9th Cir. 2008)
14 (finding that substantial evidence supported the RFC determination when the ALJ
15 properly evaluated the opinion evidence and relied on supporting medical reports
16 and testimony).

17 **C. The ALJ Did Not Err In Relying On The VE’s Testimony At Step**
18 **Four**

19 At the administrative hearing, the ALJ posed the following hypothetical to
20 the VE:

21 Assume . . . that we have an individual with the Claimant’s education
22 which is high school; the same work history and skills as the Claimant.
23 . . . [T]he individual would be limited to sedentary work, that’s a
24 sitting job; to lift[,] carry, push or pull ten pounds occasionally and
25 less than ten pounds frequently; could stand or walk for about two out
26 of eight; could sit for about six out of eight. Postural activities would
be limited to occasional. Could such a person perform any of the past
work of the Claimant?

27 (AR 59.) The VE testified that a person with those limitations could perform the
28 job of an escrow clerk as it is generally performed, but not as how Plaintiff had

1 actually performed it.³ (*Id.*)

2 Plaintiff contends that the ALJ erred by failing to further inquire about the
3 technological changes that have taken place since Plaintiff last performed the job of
4 escrow clerk in 2002. (JS 27.) Plaintiff asserts that she does not have the skills
5 necessary to perform the job, noting the “vast” technological advances and changes
6 involving electronic data since 2002. (*Id.*) Plaintiff argues that “it would be
7 impossible for anyone to maintain the skill level” that is required to perform the job
8 of escrow clerk in 2016 after not having done the work in 14 years. (JS 27-28.)

9 Plaintiff provides no support for this argument or any evidence to establish
10 that, contrary to the VE’s testimony, she is unable to perform the job as it is
11 generally performed. Indeed, Plaintiff testified that when she did perform this
12 work, she worked “[o]n a computer, sitting down.” (AR 47-48.) Despite vague
13 allegations of technological changes, Plaintiff has not shown any error in the ALJ’s
14 reliance on the VE’s testimony. *See Buck v. Berryhill*, 869 F.3d 1040, 1051 (9th
15 Cir. 2017) (“[A]t least in the absence of any contrary evidence, a VE’s testimony is
16 one type of job information that is regarded as inherently reliable”); *see also*
17 *Bayliss*, 427 F.3d at 1217 (“An ALJ may take administrative notice of any reliable
18 job information, including information provided by a VE. A VE’s recognized
19 expertise provides the necessary foundation for his or her testimony. Thus, no
20 additional foundation is required.” (citation omitted)).

21 Therefore, the Court finds that there is sufficient support for the VE’s
22 conclusion that Plaintiff could perform the job of escrow clerk.

23 ///

24 ///

25 ///

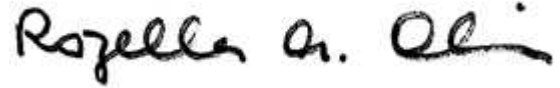
26
27
28 ³ The VE testified that Plaintiff had actually performed the job at the light level,
with lifting up to 20 pounds. (AR 59.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

IT IS ORDERED that Judgment shall be entered AFFIRMING the decision of the Commissioner denying benefits.

IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.



DATED: July 31, 2018

ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

NOTICE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW, LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.