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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

LAURA BRYANT,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner Of Social  
Security,

Defendant.

Case No. EDCV 18-0422-AS

**MEMORANDUM OPINION**

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**PROCEEDINGS**

On March 1, 2018, Plaintiff filed a Complaint seeking review of the Commissioner's denial of Plaintiff's applications for a period of disability and disability insurance benefits ("DIB"), and supplemental security income ("SSI"), respectively, under Titles II and XVI of the Social Security Act. (Dkt. No. 1). On August 8, 2018, Defendant filed an Answer and the Administrative Record ("AR"). (Dkt. Nos. 14-15). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Dkt. Nos. 12, 17-18). On November 6, 2018, the parties filed a Joint Stipulation ("Joint Stip.") setting forth their respective positions regarding Plaintiff's claim. (Dkt. No. 16). The Court has taken this matter under submission without oral argument. See C.D. Cal. C. R. 7-15.

**BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

On December 29, 2013, Plaintiff, formerly employed as a caregiver and a legal secretary (see AR 42-45, 223, 264), filed an application for DIB alleging a disability onset date of June 11, 2008. (AR 173). On June 17, 2014, Plaintiff filed an application for SSI alleging the same onset date. (AR 177). Plaintiff's applications were denied initially on April 14, 2014 (AR 106-09), and on reconsideration on September 25, 2014. (AR 113-18).

1           On August 26, 2016, Administrative Law Judge Mason D.  
2 Harrell, Jr. ("ALJ") heard testimony from Plaintiff, who was  
3 represented by counsel, and vocational expert ("VE") Troy Scott.  
4 (See AR 39-62). On September 21, 2016, the ALJ issued a decision  
5 denying Plaintiff's applications. (See AR 22-34).

6  
7           The ALJ applied the requisite five-step process to evaluate  
8 Plaintiff's case. At step one, the ALJ found that Plaintiff met  
9 the insured status requirements through December 31, 2012, and  
10 had not been engaged in substantial gainful activity since her  
11 alleged disability onset date of June 11, 2008. (AR 24).

12  
13           At step two, the ALJ found that Plaintiff's degenerative  
14 disc disease of the spine was a severe impairment but Plaintiff's  
15 impairments of depression and history of alcohol abuse were not  
16 severe. (AR 24-27).

17  
18           At step three, the ALJ determined that Plaintiff's  
19 impairments did not meet or equal a listing found in 20 C.F.R.  
20 Part 404, Subpart P, Appendix 1. (AR 27). Next, the ALJ found  
21 that Plaintiff had the following Residual Functional Capacity  
22 ("RFC")<sup>1</sup>:

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27           <sup>1</sup> A Residual Functional Capacity is what a claimant can still  
28 do despite existing exertional and nonexertional limitations. See  
20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 [Plaintiff can] perform sedentary work as defined in 20 CFR  
2 404.1567(a) and 416.967(a):<sup>2</sup> she can lift 10 pounds  
3 frequently and occasionally. Except, she can occasionally  
4 use a cane to walk. [Plaintiff] can frequently push or  
5 pull. She can stand and walk for two hours out of an eight-  
6 hour workday at 10-minutes at a time. [Plaintiff] can sit  
7 for six hours out of an eight-hour workday at 30 minutes at  
8 a time. She can stand and stretch for up to a minute before  
9 sitting down again. She can occasionally climb, balance,  
10 kneel, crawl, and walk on uneven terrain. [Plaintiff] can  
11 never climb ladders, ropes, or scaffolds. She can never work  
12 at unprotected heights.

13 (AR 28).

14 At step four, the ALJ determined, based on the VE's  
15 testimony, that Plaintiff is capable of performing her past  
16 relevant work as a legal secretary as actually and generally  
17 performed. (AR 32-33). The ALJ then proceeded to make an  
18 alternative finding, at step five, that Plaintiff can also  
19 perform other work existing in substantial numbers in the  
20 national economy - specifically, as a telemarketer. (AR 33-34).  
21 The ALJ thus determined that Plaintiff is not disabled. (AR 34).

22 On January 9, 2018, the Appeals Council denied Plaintiff's  
23 request to review the ALJ's decision. (See AR 1-6). Plaintiff  
24 now seeks judicial review of the ALJ's decision, which stands as  
25 the final decision of the Commissioner. See 42 U.S.C. §§ 405(g),  
26 1383(c).

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27 <sup>2</sup> "Sedentary work involves lifting no more than 10 pounds at  
28 a time and occasionally lifting or carrying articles like docket  
files, ledgers, and small tools. Although a sedentary job is defined  
as one which involves sitting, a certain amount of walking and  
standing is often necessary in carrying out job duties. Jobs are  
sedentary if walking and standing are required occasionally and  
other sedentary criteria are met." 20 C.F.R. §§ 404.1567(a),  
416.967(a).

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**STANDARD OF REVIEW**

This Court reviews the Administration's decision to determine if it is free of legal error and supported by substantial evidence. See Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial evidence" is more than a mere scintilla, but less than a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether substantial evidence supports a finding, "a court must consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation omitted). As a result, "[i]f the evidence can support either affirming or reversing the ALJ's conclusion, [a court] may not substitute [its] judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

**PLAINTIFF'S CONTENTIONS**

Plaintiff claims that (1) the ALJ failed to properly assess the medical opinions in the record; (2) the ALJ failed to properly consider her subjective testimony; and (3) the ALJ's findings at steps four and five are not supported by substantial evidence. (See Joint Stip. at 4-29).



1 more weight than a reviewing physician's." Holohan v. Massanari,  
2 246 F.3d 1195, 1202 (9th Cir. 2001); see also Lester v. Chater,  
3 81 F.3d 821, 830 (9th Cir. 1995). The weight given a treating  
4 physician's opinion depends on whether it is supported by  
5 sufficient medical data and is consistent with other evidence in  
6 the record. 20 C.F.R. § 416.927(c)(2); see Trevizo v. Berryhill,  
7 871 F.3d 664 (9th Cir. 2017). When a treating physician's  
8 opinion is not controlling, it is weighted based on factors such  
9 as the length of the treatment relationship and the frequency of  
10 examination, the nature and extent of the treatment relationship,  
11 supportability, consistency with the record as a whole, and  
12 specialization of the physician. 20 C.F.R. § 416.927(c)(2)-(6).

13  
14 If a treating or examining doctor's opinion is contradicted  
15 by another doctor, the ALJ must provide "specific and legitimate  
16 reasons" for rejecting the opinion. Orn v. Astrue, 495 F.3d 625,  
17 632 (9th Cir. 2007); Lester v. Chater, 81 F.3d at 830-31.  
18 However, if a treating or examining doctor's opinion is not  
19 contradicted by another doctor, the ALJ can reject the opinion  
20 only for "clear and convincing reasons." Carmickle v.  
21 Commissioner, 533 F.3d 1155, 1164 (9th Cir. 2008); Lester, 81  
22 F.3d at 830-31.

23  
24 **2. Dr. Obiocha**

25 Plaintiff contends that the ALJ erred by failing to properly  
26 discuss and weigh the records of treating physician Dr. Obiocha,  
27 (see Joint Stip. at 4-5, 13-15), noting that Dr. Obiocha treated  
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1 her for a variety of conditions other than her lower back,  
2 including hip deformity, bilateral hand numbness, thumb pain,  
3 anxiety, leg cramps, shoulder pain, chronic pelvic pain, and  
4 chronic pain syndrome. (Id. at 4 (citing AR 367)). Plaintiff  
5 points out that Dr. Obiocha's objective findings include  
6 tenderness in the hip and arthralgia in her fingers. (Id.  
7 (citing AR 376, 388)). Despite such evidence, Plaintiff  
8 contends, the ALJ never referenced Dr. Obiocha by name, and  
9 considered Dr. Obiocha's records only "in passing, and without  
10 reference to any hip or hand impairments." (Id. at 4-5).  
11 Plaintiff asserts that the ALJ merely included "a few pinpoint  
12 cites from Exhibit 9F, a portion of Dr. Obiocha's records  
13 (without referring to the provider by name)," but "did not  
14 reference Exhibit 5F, the underlying records from Dr. Obiocha."  
15 (Id. at 14). According to Plaintiff, "[t]hese records are  
16 significant, as they are SOAP notes and document Ms. Bryant's  
17 reports of pain." <sup>4</sup> (Id.).

18  
19 Plaintiff fails to point to any "opinion" by Dr. Obiocha  
20 that the ALJ failed to address regarding Plaintiff's physical or  
21 mental limitations. The record contains Dr. Obiocha's treatment  
22 notes but does not include any overall assessment by the treating  
23 physician. However, to the extent that Dr. Obiocha's treatment  
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27 <sup>4</sup> The "SOAP" - subjective, objective assessment and plan -  
28 format is a way of organizing physician progress notes. See  
<https://www.healthcareitnews.com/rethinking-progress-note>.



1 notes constitute "opinion" evidence,<sup>5</sup> any error to specifically  
2 assess such evidence is harmless.

3  
4 The ALJ considered all the medical evidence and opinions in  
5 the record, and sufficiently discussed Dr. Obiocha's treatment  
6 notes, finding that they did not support greater restrictions  
7 that the RFC determination. The ALJ noted, for example, that Dr.  
8 Obiocha's records reflect generally benign, normal findings, (AR  
9 30 (citing AR 376-77, 381-82, 387-88, 416-17, 444)), and that  
10 Plaintiff had received conservative treatment, mainly involving  
11 refills of pain medications.<sup>6</sup> (AR 30 (citing AR 442, 445)).  
12 Substantial evidence in the record supports this finding, as  
13 Plaintiff typically saw Dr. Obiocha for routine medical visits  
14 and medication refills. (See, e.g., AR 373, 379, 385, 391, 420,  
15 425, 431, 447, 457, 471).

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18  
19 <sup>5</sup> The notes may be considered "opinions" insofar as they  
20 "reflect judgments about the nature and severity of [Plaintiff's]  
21 impairment(s), including [her] symptoms, diagnosis and prognosis."  
22 20 C.F.R. § 404.1527; see also Marsh v. Colvin, 792 F.3d 1170, 1173  
23 n.1 (9th Cir. 2015) (quoting 20 C.F.R. § 404.1527) ("Dr. Betat's  
24 SOAP notes are 'medical opinion,' because they contain 'statements  
25 from [Dr. Betat] that reflect judgments about the nature and  
26 severity of [Marsh's] impairment(s), including [her] symptoms,  
27 diagnosis and prognosis, what [she] can still do despite her  
28 impairment(s), and [her] physical or mental restrictions.'" (quoting  
20 C.F.R. § 404.1527)).

29  
30 <sup>6</sup> Plaintiff testified that aside from medications, her  
physician gave her an epidural steroid injection in her back once,  
about a month before the hearing, and she was due for another the  
following week. (AR 53). She also stated that a surgeon had  
recently recommended back and hip surgery, but none had been  
scheduled. (AR 53-54).

1           Although Dr. Obiocha treated Plaintiff for a variety of  
2 conditions other than back pain, such as hand numbness and hip  
3 and shoulder pain, none of these conditions warrant greater  
4 restrictions than the ALJ's RFC determination. For example,  
5 diagnostic imaging studies of Plaintiff's lumbar spine, left  
6 shoulder, pelvis, and hands generally showed, at most, "mild"  
7 degenerative changes throughout the relevant period. (See, e.g.,  
8 AR 287, 288, 299, 300, 312, 317-18, 330, 343, 486-87, 495-96,  
9 498). The ALJ acknowledged Plaintiff's complaints of shoulder  
10 pain, which began after a fall in December 2013 and initially  
11 caused reduced range of motion. (AR 29-30; see AR 286, 358). An  
12 x-ray of the left shoulder on February 6, 2014 showed mild  
13 degenerative change but no fracture. (AR 312). As the ALJ  
14 noted, when Dr. Sargeant examined Plaintiff on August 23, 2014,  
15 he found that Plaintiff's shoulder pain "comes and goes." (AR  
16 30; see AR 361). The ALJ also remarked that an orthopedic  
17 evaluation on May 27, 2014 "revealed negative Hawkins-Kennedy  
18 test and Neer sign," and Plaintiff "did not demonstrate weakness  
19 of the rotator cuff strength." (AR 31; see AR 501). Plaintiff  
20 testified at the hearing on August 26, 2016 that the problem with  
21 her hips began "[a]bout a year ago, two years ago," and was "just  
22 gradually getting worse." (AR 53). However, as the ALJ pointed  
23 out in the decision, Plaintiff exhibited normal range of motion  
24 in the hips when Dr. Sargeant examined her in August 2014, and  
25 she had normal gait and station upon examination in January 2016.  
26 (AR 29-30; see AR 361, 505). Plaintiff also fails to point to  
27 any record evidence showing that any hand-related impairment  
28 caused functional limitations. To the contrary, Dr. Sargeant

1 found that Plaintiff demonstrated normal joint flexion, "very  
2 good dexterity," and good grip strength in both hands, concluding  
3 that Plaintiff had "no limitations for fingering, handling,  
4 feeling, and reaching." (AR 361-62).

5  
6 The ALJ's finding that Plaintiff did not have other severe  
7 impairments and did not warrant additional functional limitations  
8 is supported by substantial evidence. Accordingly, Plaintiff has  
9 failed to establish any material error in the ALJ's failure to  
10 further address Dr. Ochioba's treatment notes.

### 11 **3. Dr. Sargeant**

12  
13 Plaintiff contends that the ALJ erred by failing to adopt  
14 Dr. Sargeant's finding that Plaintiff required a walker for long  
15 distances. (Joint Stip. at 5). Dr. Sargeant provided a  
16 consultative examination of Plaintiff on August 23, 2014. (AR  
17 358-62). He opined, among other things, that Plaintiff can stand  
18 and walk for two hours and sit for six hours in an eight hour  
19 workday, but she "needs a cane for short distances and a walker  
20 for long distances." (AR 362). Dr. Sargeant also found that  
21 Plaintiff can occasionally climb, balance, kneel, crawl, walk on  
22 uneven terrain, climb ladders, and work at heights. (AR 362).

23  
24 The ALJ gave "some weight" to Dr. Sargeant's opinion,  
25 viewing it "favorably" to the extent that it was consistent with  
26 the RFC. (AR 31). However, the ALJ found that the opinion's  
27 value was diminished because Dr. Sargeant "did not have the  
28

1 benefit of reviewing the full breadth of the medical record,"  
2 such as August 2008 examinations showing "normal extremities,  
3 with full range of motion." (AR 31 (citing AR 283)). The ALJ  
4 also noted that Plaintiff "even admitted at the hearing that she  
5 uses the cane two to three times per week."<sup>7</sup> (AR 31; see AR 46).  
6 Plaintiff also stated that she does not use a walker (AR 46), and  
7 that she can stand for about ten minutes at a time and sit for  
8 twenty or thirty minutes before "it starts to get uncomfortable."  
9 (AR 55).

10  
11 The ALJ essentially adopted the standing and sitting  
12 restrictions from Dr. Sargeant's opinion and Plaintiff's  
13 testimony in his RFC determination, finding that Plaintiff "can  
14 stand and walk for two hours out of an eight-hour workday at 10-  
15 minutes at a time" and "can sit for six hours out of an eight-  
16 hour workday at 30 minutes at a time" and that Plaintiff "can  
17 occasionally use a cane to walk." (AR 28). Although the ALJ  
18 did not specifically adopt Dr. Sargeant's opinion that Plaintiff  
19 needs to use a walker "for long distances," the RFC makes such a  
20 restriction unnecessary by limiting Plaintiff to only ten-minute  
21 intervals of standing and walking. (AR 28, 362). Because the  
22 RFC finding essentially accommodates Dr. Sargeant's opinion, and  
23 the ALJ provided sufficient basis to reject it to the limited  
24 extent that he did so, there is no error.

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27 <sup>7</sup> Specifically, Plaintiff testified that she had been using  
28 the cane for "[a]bout a year," and used it "just like two or three  
times a week, four times a week." (AR 46).

1           **4. Dr. Han**

2           Plaintiff claims that the ALJ erred by failing to credit the  
3 opinion of state agency consultant, Dr. Han, which limited  
4 Plaintiff to only occasional overhead reaching with the upper  
5 left extremity. (Joint Stip. at 6-7; see AR 100). Plaintiff  
6 points out that she had been receiving treatment for shoulder  
7 pain from Dr. Obiocha and the Arrowhead Regional Medical Center.  
8 (Joint Stip. at 7). However, the ALJ explicitly recognized Dr.  
9 Han's opinion regarding overhead reaching and appropriately  
10 rejected this restriction based on its inconsistency with the  
11 objective medical evidence in the record. Specifically, the ALJ  
12 pointed out that "an orthopedic evaluation revealed negative  
13 Hawkins-Kennedy test and Neer sign," and Plaintiff "did not  
14 demonstrate weakness of the rotator cuff strength." (AR 31; see  
15 AR 501). Therefore, the ALJ did not err regarding Dr. Han's  
16 assessment.

17  
18           **5. Dr. Stanciell and Dr. Johnson**

19           Plaintiff contends that the ALJ erred in finding no severe  
20 mental limitations, and particularly by giving great weight to  
21 consultative examiner Dr. Stanciell's opinion and little weight  
22 to the opinion of state agency psychological consultant, Dr.  
23 Johnson. (Joint Stip. at 5-6).

24  
25           Dr. Stanciell provided a psychiatric evaluation of Plaintiff  
26 on August 21, 2014. (AR 351-55). He observed that Plaintiff had  
27 a depressed mood and affect, but otherwise was engaged, alert,  
28

1 well oriented, and cooperative, with good eye contact and normal  
2 speech and thought process. (AR 353). He also observed that  
3 Plaintiff had no difficulty interacting with the doctor or the  
4 staff during her visit. (AR 354). Plaintiff, moreover, was able  
5 to "do serial sevens and serial threes," to spell the word  
6 "world" forward and backward, and "to register 3 out of 3 items  
7 at 0 minutes and 3 out of 3 items at 5 minutes." (AR 353).  
8 Plaintiff also had common sense understandings and "responded  
9 appropriately to imaginary situations requiring social judgments  
10 and knowledge of the norms." (AR 353). Dr. Stanciell found that  
11 Plaintiff has no difficulties maintaining social functioning and  
12 "mild difficulties" in maintaining composure and even  
13 temperament, and in concentration, persistence, and pace. (AR  
14 354). He opined that Plaintiff would have no limitations in  
15 performing simple and repetitive tasks, and otherwise would have  
16 only mild mental limitations. (AR 354). In assigning great  
17 weight to Dr. Stanciell's opinion, the ALJ noted that Dr.  
18 Stanciell was a board-certified psychiatrist who based his  
19 opinion on "a face-to-face interview and a supportive mental  
20 examination." (AR 26-27).

21  
22 Dr. Johnson provided a consultative *review* of Plaintiff's  
23 records on September 11, 2014. (AR 97-98, 101-03). He found  
24 that Plaintiff has moderate limitations in her ability to perform  
25 detailed instructions, maintain attention and concentration,  
26 maintain punctuality and regular attendance, sustain an ordinary  
27 routine without supervision, and respond to changes in the work  
28 setting, among other abilities. (AR 101-02). Dr. Johnson based

1 these assessments on the fact that Plaintiff was depressed and  
2 withdrawn. (AR 101-02). The ALJ gave little weight to Dr.  
3 Johnson's opinion because it "overstate[d]" Plaintiff's mental  
4 limitations and conflicted with the medical record, which "showed  
5 generally appropriate behavior." (AR 27; see AR 45-47). The ALJ  
6 noted, for example, that Plaintiff has normal insight and  
7 judgment and an adequate fund of knowledge about current events,  
8 and she follows directions well. (AR 27; see AR 283, 505).

9  
10 Plaintiff contends that the ALJ erred by giving less weight  
11 to Dr. Johnson's opinion than Dr. Stanciell because Dr. Johnson's  
12 opinion "was more consistent with the medical evidence,"  
13 suggesting that Dr. Johnson "may have had more evidence before  
14 him" than Dr. Stanciell. (Joint Stip. at 6). Plaintiff asserts  
15 that "[w]e have no way of gauging what evidence the consultative  
16 examiner had" because Dr. Stanciell "simply refers to having  
17 reviewed "all" medical records." (Id.; see AR 351). Aside from  
18 mere conjecture, however, Plaintiff offers no basis to find that  
19 Dr. Stanciell reviewed less evidence when examining Plaintiff on  
20 August 21, 2014, than the record reviewed by Dr. Johnson when  
21 providing his non-examining opinion a few weeks later, on  
22 September 11, 2014. (See AR 97-98, 101-03, 351-55). The record  
23 does not reflect that any pertinent evidence was developed  
24 between these two dates and Plaintiff did not receive any regular  
25 mental health treatment other than Xanax prescribed by her  
26 primary physician. (AR 49). Notwithstanding Plaintiff's  
27 contentions, there is substantial evidence in the record to  
28 support the ALJ's decision to give greater weight to Dr.

1 Stanciell's examining opinion over Dr. Johnson's non-examining  
2 opinion.

3  
4 Plaintiff also contends that the ALJ should have found that  
5 Plaintiff had a severe mental impairment in part because Dr.  
6 Stanciell assigned Plaintiff a GAF of 58, diagnosed her with  
7 depression, and recommended treatment.<sup>8</sup> (Joint Stip. at 5; see  
8 AR 353-54). Regardless of these factors, Dr. Stanciell's  
9 findings of, at most, only mild mental limitations supports the  
10 ALJ's determination that Plaintiff does not have severe  
11 limitations in mental functioning and does not require greater  
12 limitations in her RFC. Plaintiff has failed to establish any  
13 error in the ALJ's determination to exclude mental restrictions  
14 from the RFC

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24 <sup>8</sup> As the ALJ explained, "a GAF score is a clinician's rating  
25 of an individual's overall psychological, social, and occupational  
26 functioning," and a score between 51 and 60 "indicates moderate  
27 symptoms or moderate difficulty in social, occupational, or school  
28 functioning." (AR 27 & n.1). The ALJ explained that he considered  
the GAF scores but gave them little weight because they represent  
just "a snapshot of an individual's level of functioning at a  
particular point in time." (AR 27).



1       **B.    The ALJ Did Not Err in Assessing Plaintiff's Subjective**  
2       **Complaints**

3           Plaintiff contends that the ALJ failed to provide clear and  
4       convincing reasons to discount her allegations. (Joint Stip. at  
5       15-16). Plaintiff reported, among other things, that she "can't  
6       do much of anything," including "walking, shopping, hiking,  
7       driving, and bike riding." (AR 194). She also reported that she  
8       "can't bend over to pick things up," and needs assistance getting  
9       dressed, cooking, cleaning, and "getting around." (AR 193, 195).  
10      She noted, moreover, that she has limitations in lifting,  
11      squatting, bending, standing, reaching, walking, sitting,  
12      kneeling, stair-climbing, memory, completing tasks,  
13      concentration, understanding, and following instructions. (AR  
14      211). In addition, she testified that she can stand or walk for  
15      ten minutes at a time, sit for twenty to thirty minutes, and lift  
16      five or ten pounds. (AR 55-56).

17  
18           When assessing a claimant's credibility regarding subjective  
19      pain or intensity of symptoms, the ALJ must engage in a two-step  
20      analysis. Trevizo v. Berryhill, 874 F.3d 664, 678 (9th Cir.  
21      2017). First, the ALJ must determine if there is medical  
22      evidence of an impairment that could reasonably produce the  
23      symptoms alleged. Garrison v. Colvin, 759 F.3d 995, 1014 (9th  
24      Cir. 2014). "In this analysis, the claimant is not required to  
25      show that her impairment could reasonably be expected to cause  
26      the severity of the symptom she has alleged; she need only show  
27      that it could reasonably have caused some degree of the symptom."  
28      Id. (emphasis in original) (citation omitted). "Nor must a

1 claimant produce objective medical evidence of the pain or  
2 fatigue itself, or the severity thereof." Id. (citation  
3 omitted).

4  
5 If the claimant satisfies this first step, and there is no  
6 evidence of malingering, the ALJ must provide specific, clear and  
7 convincing reasons for rejecting the claimant's testimony about  
8 the symptom severity. Trevizo, 874 F.3d at 678 (citation  
9 omitted); see also Smolen, 80 F.3d at 1284 ("[T]he ALJ may reject  
10 the claimant's testimony regarding the severity of her symptoms  
11 only if he makes specific findings stating clear and convincing  
12 reasons for doing so."); Robbins v. Soc. Sec. Admin., 466 F.3d  
13 880, 883 (9th Cir. 2006) ("[U]nless an ALJ makes a finding of  
14 malingering based on affirmative evidence thereof, he or she may  
15 only find an applicant not credible by making specific findings  
16 as to credibility and stating clear and convincing reasons for  
17 each."). "This is not an easy requirement to meet: The clear and  
18 convincing standard is the most demanding required in Social  
19 Security cases." Garrison, 759 F.3d at 1015 (citation omitted).

20  
21 In discrediting the claimant's subjective symptom testimony,  
22 the ALJ may consider the following:

23 (1) ordinary techniques of credibility evaluation, such as  
24 the claimant's reputation for lying, prior inconsistent  
25 statements concerning the symptoms, and other testimony by  
26 the claimant that appears less than candid; (2) unexplained  
27 or inadequately explained failure to seek treatment or to  
28 follow a prescribed course of treatment; and (3) the  
claimant's daily activities.

1 Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014) (citation  
2 omitted). Inconsistencies between a claimant's testimony and  
3 conduct, or internal contradictions in the claimant's testimony,  
4 also may be relevant. Burrell v. Colvin, 775 F.3d 1133, 1137  
5 (9th Cir. 2014); Light v. Soc. Sec. Admin., 119 F.3d 789, 792  
6 (9th Cir. 1997). In addition, the ALJ may consider the  
7 observations of treating and examining physicians regarding,  
8 among other matters, the functional restrictions caused by the  
9 claimant's symptoms. Smolen, 80 F.3d at 1284; accord Burrell,  
10 775 F.3d at 1137. However, it is improper for an ALJ to reject  
11 subjective testimony based "solely" on its inconsistencies with  
12 the objective medical evidence presented. Bray v. Comm'r of Soc.  
13 Sec. Admin., 554 F.3d 1219, 1227 (9th Cir. 2009) (citation  
14 omitted).

15  
16 Further, the ALJ must make a credibility determination with  
17 findings that are "sufficiently specific to permit the court to  
18 conclude that the ALJ did not arbitrarily discredit claimant's  
19 testimony." Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir.  
20 2008) (citation omitted); see Brown-Hunter v. Colvin, 806 F.3d  
21 487, 493 (9th Cir. 2015) ("A finding that a claimant's testimony  
22 is not credible must be sufficiently specific to allow a  
23 reviewing court to conclude the adjudicator rejected the  
24 claimant's testimony on permissible grounds and did not  
25 arbitrarily discredit a claimant's testimony regarding pain.")  
26 (citation omitted). Although an ALJ's interpretation of a  
27 claimant's testimony may not be the only reasonable one, if it is  
28 supported by substantial evidence, "it is not [the court's] role

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

3  
4 Here, the ALJ found that Plaintiff's "medically determinable  
5 impairments could reasonably be expected to cause the alleged  
6 symptoms," but her "statements concerning the intensity,  
7 persistence and limiting effects of these symptoms are not  
8 entirely consistent with the medical evidence and other evidence  
9 in the record for the reasons explained in th[e] decision." (AR  
10 32). To support this finding, the ALJ pointed to the "generally  
11 mild" diagnostic evidence and Plaintiff's daily activities,  
12 including the part-time work she performs as a caregiver. (AR  
13 32). These findings constitute specific, clear, and convincing  
14 reasons to support the ALJ's credibility finding.

15  
16 Substantial evidence supports the ALJ's finding that the  
17 severity of Plaintiff's allegations is not fully supported by the  
18 objective medical evidence. (AR 32). While inconsistencies with  
19 the objective medical evidence cannot be the sole ground for  
20 rejecting a claimant's subjective testimony, it is a factor that  
21 the ALJ may consider when evaluating credibility. Bray, 554 F.3d  
22 at 1227; Burch v. Barnhart, 400 F.3d 676, 681 (9th Cir. 2005);  
23 Rollins, 261 F.3d at 857; see SSR 16-3p, at \*5 ("objective  
24 medical evidence is a useful indicator to help make reasonable  
25 conclusions about the intensity and persistence of symptoms,  
26 including the effects those symptoms may have on the ability to  
27 perform work-related activities"); Carmickle, 533 F.3d at 1161  
28 ("Contradiction with the medical record is a sufficient basis for

1 rejecting the claimant's subjective testimony."). Here, the ALJ  
2 correctly noted that the results of diagnostic studies were  
3 generally mild. (See AR 287, 302, 317-18, 330, 347). Imaging  
4 studies of the lumbar spine from 2013 and 2014, for example,  
5 revealed "mild intervertebral disk space narrowing" and  
6 "degenerative disc disease at L5-S1," but "otherwise unremarkable  
7 lumbosacral spine." (AR 287, 330). Similarly, Plaintiff's 2013  
8 and 2014 imaging studies of the left shoulder showed  
9 "unremarkable alignment" and "mild" degenerative changes. (AR  
10 288, 317-18, 347).

11  
12 Substantial evidence also supports the ALJ's finding that  
13 Plaintiff's daily activities and caregiver work belied the  
14 severity of her allegations. (AR 32). Plaintiff's ability to  
15 perform various everyday activities is a legitimate basis to  
16 discount Plaintiff's credibility. See Burch, 400 F.3d at 680-81  
17 (claimant's allegations of disability properly discredited where  
18 claimant was able to care for her own personal needs, cook,  
19 clean, shop, interact with her boyfriend, and manage finances).  
20 Plaintiff contends that her work as a caregiver<sup>9</sup> was an improper  
21 basis to discredit her testimony because "her job duties were  
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23 <sup>9</sup> Plaintiff testified that she works as a caregiver for 134  
24 hours a month, and the gentleman she cares for is a friend who lives  
25 in her house. (AR 42, 48, 50). When asked if she believed she  
26 could do this work full time, Plaintiff initially replied that she  
27 could not because "[t]hey won't allow it." (AR 49). Only when her  
28 counsel pressed further by asking whether she had physical  
limitations that would prevent her from doing the work full time did  
she follow up by explaining: "It's just hard to bend over, pick up,  
get comfortable, not steady on my feet, and just in pain a lot, just  
tired." (AR 49).

1 basically making sure her client takes his medication and she  
2 watches over him." (Joint Stip. at 16 (citing AR 42)). Contrary  
3 to this statement, however, Plaintiff testified that she also  
4 drives the client to the doctor, cooks his meals, and washes his  
5 clothes. (AR 47-48). Moreover, she reported that she feeds and  
6 bathes him. (AR 267). Aside from this work, she reported that  
7 she loads the dishwasher and does "light cleaning." (AR 208).  
8 She also testified that she drove to the hearing, but this was  
9 the farthest she had driven, and usually her driving involves  
10 just going "to the grocery store and back home." (AR 50). She  
11 shops at the grocery store once a month. (AR 209). Although  
12 Plaintiff's activities and caregiver tasks may not necessarily  
13 show that she was unimpaired, the ALJ reasonably found them  
14 inconsistent with the level of impairment that Plaintiff alleged.  
15 See Molina v. Astrue, 674 F.3d 1104, 1113 (9th Cir. 2012) ("Even  
16 where [claimant's] activities suggest some difficulty  
17 functioning, they may be grounds for discrediting the claimant's  
18 testimony to the extent that they contradict claims of a totally  
19 debilitating impairment.").

20  
21 Accordingly, the ALJ properly discounted Plaintiff's  
22 credibility by giving specific, legitimate reasons that are  
23 supported by substantial evidence in the record.

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1 **C. The ALJ Did Not Err in Concluding, at Step Four, that**  
2 **Plaintiff Is Not Disabled**

3 Plaintiff claims that the ALJ erred in finding Plaintiff not  
4 disabled, both in his step four finding and the alternative step  
5 five finding. (Joint Stip. at 23-25, 28-29). At step four, the  
6 ALJ found that Plaintiff was capable of performing her past  
7 relevant work as a legal secretary. (AR 32-33). In making this  
8 finding, the ALJ relied on the VE's testimony that a person with  
9 Plaintiff's limitations would be able to perform this work. (AR  
10 32-34, 57-59). Plaintiff asserts that the VE's testimony was  
11 "faulty" because "there was no discussion of vocational  
12 adjustment." (Joint Stip. at 24). As support, Plaintiff quotes  
13 SSR 96-9p:

14 Under the regulations, "sedentary work" represents a  
15 significantly restricted range of work. Individuals who are  
16 limited to no more than sedentary work by their medical  
17 impairments have very serious functional limitations. For  
18 the majority of individuals who are age 50 or older and who  
19 are limited to the full range of sedentary work by their  
20 medical impairments, the rules and guidelines in appendix 2  
21 require a conclusion of "disabled."

22 (Joint Stip. at 24 (quoting SSR 96-9p)). Plaintiff further  
23 claims that the ALJ erred at step four because the ALJ failed to  
24 include additional functional limitations to account for  
25 Plaintiff's shoulder impairment and mental impairment. (Id. at  
26 28).

27 Contrary to Plaintiff's argument, there is no requirement  
28 for the ALJ to consider vocational adjustment at step four. The  
administrative ruling Plaintiff relies on, SSR 96-9p, applies  
only to step five of the sequential evaluation, where the ALJ,

1 after finding that a claimant cannot perform any past relevant  
2 work, determines whether the claimant instead "can make an  
3 adjustment to other work." 20 C.F.R. § 404.1520(g), 416.920(g).  
4 The stated purpose of SSR 96-9p is "[t]o explain the Social  
5 Security Administration's policies regarding the impact of [an  
6 RFC] assessment for less than a full range of sedentary work on  
7 an individual's ability to do other work." SSR 96-9p (emphasis  
8 added).

9  
10 Thus, the ALJ did not err by failing to consider vocational  
11 adjustment at step four. Furthermore, for the reasons discussed  
12 above, Plaintiff has failed to demonstrate any error in the ALJ's  
13 RFC finding, which mirrors the hypothetical limitations presented  
14 to the VE at step four. (AR 28, 58). Accordingly, the ALJ  
15 properly relied on the VE's testimony to conclude, at step four,  
16 that Plaintiff can perform her past relevant work as a legal  
17 secretary, and is therefore not disabled. (AR 32-34). Because  
18 the ALJ properly found Plaintiff not disabled at step four, the  
19 Court need not address Plaintiff's contentions regarding the  
20 ALJ's alternative finding at step five.

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**CONCLUSION**

For the foregoing reasons, the decision of the Commissioner is AFFIRMED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 30, 2018

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/s/  
ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE