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

NANCY J. M.,¹

Plaintiff,

v.

ANDREW SAUL, Commissioner of
Social Security,

Defendant.

Case No. ED CV 19-01144-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Nancy J. M. (“Plaintiff”) challenges the Commissioner’s denial of her application for a period of disability, disability insurance benefits (“DIB”), and supplemental security income. For the reasons stated below, the decision of the Commissioner is AFFIRMED.

II. PROCEEDINGS BELOW

On October 20, 2015, Plaintiff filed a Title II application for a period of disability and DIB alleging disability beginning on October 1, 2014. (Administrative

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 Record (“AR”) 200, 205.) Plaintiff also filed a Title XVI application for
2 supplemental security income. (AR 207.) Her applications were initially denied on
3 February 9, 2016, and upon reconsideration on April 14, 2016. (AR 96, 97, 122,
4 123.) Plaintiff filed a written request for hearing, and a hearing was held on May 3,
5 2018. (AR 41-71, 140.) Represented by counsel, Plaintiff appeared and testified,
6 along with an impartial vocational expert (“VE”). (AR 41-71.) On July 12, 2018,
7 the Administrative Law Judge (“ALJ”) found that Plaintiff had not been under a
8 disability, pursuant to the Social Security Act, from October 1, 2014, through the date
9 of the decision. (AR 34-35.) The ALJ’s decision became the Commissioner’s final
10 decision when the Appeals Council denied Plaintiff’s request for review. (AR 1-3.)
11 Plaintiff filed this action on June 21, 2019. (Dkt. No. 1.)

12 The ALJ followed a five-step sequential evaluation process to assess whether
13 Plaintiff was disabled under the Social Security Act. *See Lester v. Chater*, 81 F.3d
14 821, 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not
15 engaged in substantial gainful activity since October 1, 2014, the alleged onset date
16 (“AOD”). (AR 25.) At **step two**, the ALJ found that Plaintiff has the following
17 severe impairments: degenerative disc disease; bilateral tendinitis of the shoulders;
18 bilateral plantar fasciitis with heel spurs; hypertension, obesity; and a depressive
19 disorder. (*Id.*) At **step three**, the ALJ found that Plaintiff “does not have an
20 impairment or combination of impairments that meets or medically equals the
21 severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix
22 1.” (AR 26.)

23 Before proceeding to step four, the ALJ found that Plaintiff had the residual
24 functional capacity (“RFC”) to:

25 [P]erform light work However, she can operate bilateral foot and
26 hand controls only on a frequent basis. She can only frequently reach
27 overhead bilaterally. She can only frequently balance, stoop, kneel,
28 crouch, and crawl. In addition, the claimant is limited to tasks that can
be learned within a short demonstration period of up to 30 days, and

1 with no more than frequent changes to the workplace tasks and duties.
2 She can work primarily with things, rather than with people, such that
3 the work contact with others is only occasional. Finally, the claimant
4 can maintain concentration, pace, and persistence on this limited range
of tasks for 2 hours at a time before taking a regularly scheduled break
and then returning to work.

5 (AR 29.)

6 At **step four**, the ALJ found that Plaintiff is capable of performing past
7 relevant work as a storage-facility rental clerk, and thus the ALJ did not continue to
8 step five. (AR 33-34.) Accordingly, the ALJ determined that Plaintiff had not been
9 under a disability from the AOD through the date of the decision. (AR 34-35.)

10 **III. STANDARD OF REVIEW**

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

22 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
23 specific quantum of supporting evidence. Rather, a court must consider the record
24 as a whole, weighing both evidence that supports and evidence that detracts from the
25 Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001)
26 (citations and internal quotation marks omitted). “‘Where evidence is susceptible to
27 more than one rational interpretation,’ the ALJ’s decision should be upheld.” *Ryan*
28 *v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*

1 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at 882 (“If the
2 evidence can support either affirming or reversing the ALJ’s conclusion, we may not
3 substitute our judgment for that of the ALJ.”). The Court may review only “the
4 reasons provided by the ALJ in the disability determination and may not affirm the
5 ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th
6 Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

7 **IV. DISCUSSION**

8 Plaintiff raises three issues for review: (1) whether the ALJ has properly
9 considered the relevant medical evidence of record in assessing Plaintiff’s RFC; (2)
10 whether the ALJ has properly considered Plaintiff’s subjective statements of record
11 and testimony under oath in assessing Plaintiff’s RFC; and (3) whether the ALJ’s
12 conclusions at step four as to Plaintiff’s past relevant work are supported by
13 substantial evidence of record. (*See* Joint Submission (“JS”) 4.) For the reasons
14 below, the Court affirms.

15 **A. The ALJ Properly Considered Plaintiff’s Subjective Statements of** 16 **Record and Testimony in Assessing Plaintiff’s RFC²**

17 Plaintiff contends that the “ALJ has failed to properly consider Plaintiff’s
18 subjective statements of record and testimony under oath regarding her physical and
19 mental symptoms and limitations in the assessment of Plaintiff’s [RFC].” (JS 18; *see*
20 JS 19-21.) The Commissioner contends that the ALJ properly evaluated Plaintiff’s
21 subjective testimony. (JS 21; *see* JS 22-26.)

22 **1. Plaintiff’s May 3, 2018 Testimony**

23 Plaintiff testified that she lives with her friend and her friend’s husband in their
24 house. (AR 51.) Plaintiff stated that her friend and sister help her get out of bed, get
25 to the bathroom, shower, and get dressed. (AR 52.) Plaintiff’s stated that her friend

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

1 gets things ready for Plaintiff to bathe, will “wash” her and her hair, and stays in the
2 bathroom with her. (AR 61.)

3 Plaintiff stated that once she gets dressed and cleaned up, she stays home with
4 her friend or her sister. (AR 53.) Plaintiff testified that she does not help with any
5 of the household chores. (*Id.*) She explained that she gets through her anxiety and
6 the stress of day-to-day activities with the help of her yorkie. (AR 53-54.) She feeds
7 her dog two or three times per day and gives her a lot of treats. (AR 54.)

8 Plaintiff stated that during the day she speaks on the phone with her friends.
9 (AR 56.) She testified that she receives text messages and responds using a voice-
10 to-text function. (*Id.*) She explained that she answers via text when she can, but
11 states that she does not answer because it is too difficult. (*Id.*)

12 Plaintiff has a driver’s license, but did not drive herself to the hearing. (AR
13 47.) A friend drove her to the hearing. (*Id.*) The trip took 40 minutes because she
14 had to stop three times to go to the restroom. (AR 48.) She also stated that she went
15 to the restroom after she arrived at the building. (*Id.*) Plaintiff could not drive herself
16 to the hearing because she wears a back brace and cannot drive with it on. (*Id.*) She
17 last drove approximately four months prior to the hearing. (*Id.*) She stated that she
18 has tried to drive herself to doctors’ appointments but on the way, she has accidents.
19 (*Id.*) She is at the point where she has her sister or friend drive her. (*Id.*)

20 Plaintiff has a GED. (AR 48.) She last worked about four and a half years
21 ago. (AR 49.) She worked for in-home supportive services as a care provider. (*Id.*)
22 She had to stop working because of her chronic explosive diarrhea condition. (*Id.*)
23 Plaintiff worked as a care provider four hours per day, five days per week. (*Id.*)
24 Plaintiff stated that after working as a care provider, she applied for other jobs, but
25 was never hired. (AR 49.) Plaintiff stopped looking for work when she applied for
26 disability. (*Id.*) She stopped her job search because she was “having more problems
27 with the arthritis in [her] hands and can’t . . . type.” (*Id.*) She stated that she does
28 not use computers. (*Id.*)

1 Plaintiff testified that she is 5 feet 7 inches tall and weighs 240 pounds. (AR
2 46.) Plaintiff stated that her doctors have given her a diet with alkaline water and
3 have told her that it is important that she exercise. (*Id.*) Plaintiff testified that she
4 has implemented dietary changes. (*Id.*) The doctors recommended back
5 strengthening exercises because she fractured her back and had two bulging discs.
6 (*Id.*) Plaintiff stated that she was told it would be a good idea for her to walk. (*Id.*)
7 When asked if she had implemented the recommendation, Plaintiff responded that
8 she does not “stray far from the house.” (*Id.*) Plaintiff explained that she has to stay
9 close to the restroom because she has chronic explosive diarrhea. (AR 47.) She
10 described the experience as humiliating, embarrassing, and degrading. (*Id.*) Given
11 her condition, Plaintiff states that she does not see how she can work. (*Id.*) Plaintiff
12 testified that she has to have someone else clean her because she cannot clean herself.
13 (*Id.*)

14 Plaintiff explained that since 2014 her conditions have worsened. (AR 52-53.)
15 Her arthritis is worse. (AR 53.) Plaintiff testified that her conditions include chronic
16 explosive diarrhea, difficulty using her hands, and problems with her back. (AR 56.)
17 She cannot stand up right and has difficulty walking since her back fracture. (AR
18 57.) Plaintiff reported that she is able to stand and walk for approximately five
19 minutes before needing to sit down again. (*Id.*) She can sit for anywhere between
20 two to 10 minutes before needing to stand up, depending on the day. (*Id.*) Plaintiff’s
21 day consists of changing between sitting and standing, and she spends a lot of time
22 in the bathroom. (*Id.*) Plaintiff’s doctors want to get her back in better shape before
23 doing anything that could aggravate her kidneys or bowels, but the doctors are
24 looking for other solutions. (AR 58.) She stated that her doctors tell her to take it
25 slow and take her medicine. (*Id.*) Plaintiff gets hydrocortisone injections in her back
26 to help manage the constant pain. (*Id.*)

27 Plaintiff explained that she cries for no reason. (AR 59-60.) She gets upset
28 and anxious about the chronic explosive diarrhea. (AR 60.) Plaintiff reported that

1 she takes many medications, including atenolol and hydrochlorothiazide for her
2 blood pressure. (*Id.*) She also takes Abilify, Wellbutrin, nitroglycerin, Flonase,
3 Zyrtec, and Motrin. (*Id.*) Plaintiff takes Norco for back pain. (*Id.*)

4 Plaintiff also testified that she has problems with her shoulders. (AR 60-61.)
5 She cannot lift her arms over her head. (AR 61.) As to her depression and anxiety,
6 Plaintiff stated that she sees her psychiatrist once a month. (*Id.*) She takes trazodone,
7 gabapentin, and Motrin. (*Id.*) She takes Wellbutrin and Abilify for depression. (*Id.*)
8 Plaintiff explained that she falls four to five times every few days. (AR 61-62.) She
9 gets sharp pains shooting up her back or sciatic nerve and that can make her fall. (AR
10 62.) Her falls are unexpected, she feels pain and then is on the ground. (*Id.*) She
11 also stated she drops things on a daily basis. (*Id.*) Plaintiff does not sleep well at
12 night and takes trazodone and Ambien to help her. (*Id.*) However, even with
13 medication, she wakes up several times throughout the night. (*Id.*) She is woken up
14 by pain in her back or side. (*Id.*) Plaintiff stated she was prescribed a back brace and
15 was told that using a cane would be beneficial to her. (AR 63.)

16 **2. Plaintiff's April 1, 2016 Function Report**

17 On April 1, 2016, Plaintiff prepared a function report. (*See* AR 311-19.)
18 Plaintiff reported having recurrent major depression and anxiety with major mood
19 swings. (AR 311.) Plaintiff also stated that she has urge incontinence and irritable
20 bowel syndrome with explosive diarrhea “which increases [her] anxiety level on a
21 daily basis.” (*Id.*) She is in “constant fear of urinating and [defecating]” on herself
22 in public and that stops her from going out in public. (*Id.*) She reported that she has
23 to stay close to the bathroom at all times. (*Id.*)

24 Plaintiff explained that during the day, due to her urge incontinence and
25 irritable bowel syndrome with explosive diarrhea, she can no longer prepare her own
26 meals, so she sits on the couch and watches television, uses the computer when she
27 is not in the bathroom, and goes to doctors' appointments. (AR 312.) Plaintiff
28 explains that she goes to the bathroom “a minimum of 12 hours out of 24 hours every

1 day.” (*Id.*) She brushes her teeth and combs her hair. (*Id.*) She stated that she is
2 responsible for her dog. (*Id.*) She reported that, before her conditions, she was able
3 to prepare her meals, do household chores, work, shop, and take care of herself
4 without help. (*Id.*) Plaintiff explained that her insomnia and severe depressive
5 disorder cause her to “lose sleep and [her] energy is extremely low and lack of
6 concentration.” (*Id.*)

7 As to her personal care, Plaintiff sometimes needs help getting dressed and
8 bathing. (AR 312.) Plaintiff explained that because she has low energy, she needs
9 reminders to take care of personal need, and help getting dressed and bathed. (AR
10 313.) She needs daily reminders to take medications because she forgets. (*Id.*)

11 Plaintiff stated that she prepares her own meals every day. (AR 313.) Her
12 meals include canned soup, sandwiches, and frozen dinners. (*Id.*) It takes between
13 10 and 30 minutes to prepare her meals. (*Id.*) As to household chores, Plaintiff can
14 care for her dog, check the mail, and make her bed. (*Id.*) Plaintiff spends between 5
15 and 30 minutes on these chores. (*Id.*) She reported needing reminders and
16 encouragement to do things daily. (*Id.*) She does not do house or yardwork because
17 she has low energy, depression, and has to stay close to the bathroom. (AR 314.)

18 Plaintiff stated that she goes outside to check her mail or to attend doctors’
19 appointments. (AR 314.) When she goes out, she drives a car or rides in a car. (*Id.*)
20 She can drive a car and can go out alone. (*Id.*) She shops in stores, by phone, and
21 by computer. (*Id.*) She typically shops between two and four times a week. (*Id.*)
22 However, she can no longer shop for herself in stores because of her conditions. (*Id.*)
23 She is able to pay bills, count change, handle a savings account, and use her
24 checkbook or money orders. (*Id.*)

25 Plaintiff’s hobbies and interests include, watching television and using the
26 computer. (AR 315.) Plaintiff spends time with others by speaking on the phone
27 daily and talking to her doctors at appointments every week. (*Id.*) Plaintiff regularly
28 attends doctors’ appointments and goes to church when she feels like it. (*Id.*)

1 Plaintiff stated that since her conditions began, she is not social and does not
2 participate in social activities. (AR 316.) Plaintiff reported that her conditions affect
3 her ability to lift, squat, bend, stand, walk, kneel, and stair-climb. (*Id.*) Her ability
4 to concentrate is affected. (*Id.*) She reported that she can only lift 10 pounds and
5 cannot squat or bend without feeling great pain. (*Id.*) She runs out of breath while
6 climbing stairs. (*Id.*) Plaintiff can walk less than one block, before having to rest for
7 10, 15 minutes or more. (*Id.*) She can pay attention for an hour or less. (*Id.*) She
8 can follow some written instructions like a recipe, but cannot fill out forms because
9 they are confusing. (*Id.*) Whether she can follow spoken instructions depends on
10 who is giving the instructions because she is easily confused. (*Id.*)

11 Plaintiff reported that she has problems working with others. (AR 317.) She
12 was previously fired because she had problems getting along with others, including
13 her bosses. (*Id.*) She does not handle stress well. (*Id.*) Plaintiff does not handle
14 changes well at all, and hates change. (*Id.*) Plaintiff has extreme anxiety, fears
15 urinating or defecating herself in public, and fears abandonment. (*Id.*) She uses
16 glasses and night splints every day. (*Id.*) Plaintiff uses Trazodone which causes her
17 to lose sleep, have disturbing dreams, anxiety, and depression. (AR 318.)

18 **3. Plaintiff's November 13, 2015 Function Report³**

19 Plaintiff completed a function report on November 13, 2015. (AR 251-259.)
20 Plaintiff reported feeling a lot of pain in her feet and being unable to walk or stand
21 for more than 30 minutes. (AR 251.) Plaintiff explained that before her condition
22 she was able to walk and stand for longer periods of time, and she could go for long
23 walks. (AR 252.) She was also able to do household chores, including vacuuming
24 and dusting. (*Id.*) She stated that she cannot lift things that are over 10 pounds. (*Id.*)
25 Plaintiff reported that her foot pain also affects her sleep. (*Id.*)

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28 ³ Because the second November 13, 2015 function report is similar to the first report,
the Court provides only a brief summary. (*See* AR 311-319.)

1 Plaintiff stated that she has no problem with personal care and did not need
2 reminders to take care of her personal needs and grooming. (AR 252-53.) Plaintiff
3 can prepare her own meals, wash her dishes, and do her own laundry. (AR 253.)
4 Plaintiff reported that she goes grocery shopping, but never for more than 30 minutes.
5 (AR 254.) Plaintiff also reported going to doctors' appointments and church on
6 Sundays when she feels like it. (AR 255.) She did not need anyone to accompany
7 her. (*Id.*)

8 Plaintiff reported that her illnesses and conditions affect her abilities to lift,
9 squat, bend, stand, walk, climb stairs, and concentrate. (AR 256.) She could bend
10 and squat for less than five minutes. (*Id.*) She could climb stairs for five minutes.
11 (*Id.*) She was able to concentrate for 10 to 60 minutes. (*Id.*) She could walk for one
12 block before needing to rest for 15 to 20 minutes. (*Id.*) Plaintiff also explained that
13 she has tarsal tunnel in both of her feet which causes extreme pain. (AR 282.)
14 Plaintiff reported that this condition makes it "very difficult to walk and stand due to
15 the extreme pain." (*Id.*)

16 **4. Applicable Legal Standards**

17 "In assessing the credibility of a claimant's testimony regarding subjective
18 pain or the intensity of symptoms, the ALJ engages in a two-step analysis." *Molina*
19 *v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (citing *Vasquez v. Astrue*, 572 F.3d
20 586, 591 (9th Cir. 2009)). "First, the ALJ must determine whether the claimant has
21 presented objective medical evidence of an underlying impairment which could
22 reasonably be expected to produce the pain or other symptoms alleged." *Treichler v.*
23 *Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (quoting
24 *Lingenfelter*, 504 F.3d at 1036) (internal quotation marks omitted). If so, and if the
25 ALJ does not find evidence of malingering, the ALJ must provide specific, clear and
26 convincing reasons for rejecting a claimant's testimony regarding the severity of his
27 symptoms. *Id.* The ALJ must identify what testimony was found not credible and
28 explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d

1 1195, 1208 (9th Cir. 2001). “General findings are insufficient.” *Lester*, 81 F.3d at
2 834.

3 **5. Discussion**

4 “After careful consideration of the evidence,” the ALJ found that Plaintiff’s
5 “medically determinable impairments could reasonably be expected to cause the
6 alleged symptoms,” but found that Plaintiff’s “statements concerning the intensity,
7 persistence, and limiting effects of these symptoms are not entirely consistent with
8 the medical evidence and other evidence in the record.” (AR 30.) Specifically, the
9 ALJ found that Plaintiff’s statements were inconsistent with the objective medical
10 evidence, Plaintiff’s treatment, and Plaintiff’s reported activities. (AR 33; *see* AR
11 29-33.) No malingering allegation was made, and therefore, the ALJ’s reasons must
12 be “clear and convincing.”

13 **a. Reason No. 1: Inconsistent with the Objective Medical** 14 **Evidence**

15 The lack of supporting objective medical evidence cannot form the sole basis
16 for discounting testimony, but it is a factor that the ALJ may consider in making a
17 credibility determination. *Burch*, 400 F.3d at 681; *Rollins v. Massanari*, 261 F.3d
18 853, 857 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)).

19 Plaintiff “strongly disagrees” with the ALJ’s finding that the objective medical
20 evidence does not support Plaintiff’s statements. (JS 19.) Instead, Plaintiff contends
21 that she has “well documented impairments affecting her bilateral feet, lumbar spine,
22 and gastrointestinal system.” (*Id.*) Plaintiff also argues that the record documents
23 consistent “severe mental impairments including major depressive disorder and
24 anxiety,” which support her statements regarding her mental symptoms and
25 limitations. (*Id.*) She also contends that the ALJ failed to specify which statements
26 were not fully credible. (JS 20.)

27 As to Plaintiff’s alleged difficulties sitting, standing, and walking, the ALJ
28 found that the medical evidence did not support the full extent of Plaintiff’s claims.

1 (See AR 30.) The ALJ relied on records showing Plaintiff had a normal gait and
2 balance. (*Id.*, citing 451, 559, 563, 632.) Plaintiff did not require the use of an
3 assistive device and testified that she was not prescribed a cane. (AR 30, citing AR
4 451; *see* AR 63.) She was “able to heel walk and toe walk ‘with ease.’” (AR 30.)
5 The ALJ also identified records documenting that Plaintiff had “5 out of 5” motor
6 strength in her major muscle groups. (*Id.*, citing AR 559, 564.) Additionally, the
7 ALJ noted that Plaintiff did not appear to be in acute distress during appointments,
8 and her physicians did not note that Plaintiff “need[ed] to alternate between seated
9 and standing positions every 5 to 15 minutes.” (AR 30; *see* AR 360-635.) While
10 Plaintiff used a back brace for a compression fracture, the ALJ noted that the injury
11 healed, and Plaintiff was advised that she could discontinue the use of the brace in
12 August 2017. (AR 30, citing AR 633.)

13 However, the ALJ did find that “some of the medical evidence supports partial
14 limitation of function.” (AR 30.) The ALJ found that Plaintiff’s obesity could cause
15 exertional and postural limitations, but reasoned that the assessed RFC was consistent
16 with those limitations. (AR 30-31.) The ALJ relied on an August 15, 2017 evaluation
17 in which “straight-leg raising was mildly positive on the left side, consistent with left
18 lower extremity radiculopathy.” (AR 30-31, citing AR 633.) The ALJ also pointed
19 to Plaintiff’s history of plantar fasciitis and heel spurs, but noted that her pain was
20 “almost entirely resolved with treatment.” (AR 31; *see* AR 361-382.)

21 As to Plaintiff’s difficulties holding items or typing on the computer, the ALJ
22 found that Plaintiff’s statements were not supported by the evidence. (AR 31.) The
23 ALJ found that contrary to Plaintiff’s testimony, there was no diagnostic imaging
24 showing osteoarthritis of her hands. (*Id.*) The ALJ relied on examination results
25 documenting Plaintiff’s “grossly normal range of motion of the wrists and finger
26 joints bilaterally,” and good hand coordination. (*Id.*, citing AR 452, 453.) The ALJ
27 also found that Plaintiff’s statements regarding her difficulties with diarrhea were
28 only partially supported because imaging studies, stool studies, and

1 esophagogastroduodenoscopy rendered negative results. (AR 31, citing AR 447.)

2 As to Plaintiff's statements regarding her difficulties concentrating and being
3 easily confused, the ALJ found that the evidence did not support the degree of
4 limitation alleged. (AR 32.) The ALJ relied on Plaintiff's ability to "sustain
5 concentration and work without distraction" during her January 18, 2016
6 psychological evaluation. (*Id.*, citing AR 459.) Additionally, the ALJ pointed to
7 Plaintiff's appearance at the hearing and cited to her ability to recall her medications,
8 the dosage, and the purpose of each medication. (AR 32; *see* AR 60-61.)

9 The Court finds that the ALJ thoroughly considered Plaintiff's medical records
10 (*see* AR 29-33) and found that the objective medical evidence did not support
11 Plaintiff's allegations of disabling symptoms and limitations (*see* AR 33). *See*
12 *Reddick*, 157 F.3d at 725. Throughout his decision the ALJ relies on medical records
13 documenting normal and negative examination results, all of which the ALJ was
14 permitted to rely on in assessing Plaintiff's testimony. *See Garza v. Astrue*, 380 F.
15 App'x 672, 674 (9th Cir. 2010) (finding that an ALJ properly considered a claimant's
16 normal exam findings when noting a lack of objective medical evidence to support
17 the claimant's allegations); *see also Margolis v. Berryhill*, No. CV 17-5047 SS, 2018
18 WL 3129775, at *10 (C.D. Cal. June 22, 2018) (holding that ALJ may rely on normal
19 and unremarkable examinations in discounting a claimant's subjective testimony);
20 *Cosio v. Astrue*, No. EDCV 10-828 SS, 2011 WL 2784815, at *11 (C.D. Cal. July
21 15, 2011) (finding ALJ properly relied on negative examination results in finding
22 claimant's testimony unsupported by the record). Additionally, the ALJ was allowed
23 to rely on the lack of diagnostic imaging as to Plaintiff's alleged osteoarthritis of the
24 hands (*see* AR 31, 55-56). *See Lazzotti v. Colvin*, No. 1:13-CV-1329-BAM, 2015
25 WL 1137086, at *11 (E.D. Cal. Mar. 12, 2015) ("[I]t was reasonable for the ALJ to
26 discount Plaintiff's subjective complaints based on the lack of corroborating
27 evidence from the EMG or nerve conduction studies.").

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1 While other evidence in the record could be found to support Plaintiff's
2 testimony, the ALJ was allowed to weigh the normal and negative examination
3 results in evaluating Plaintiff's testimony. Where, as here, the evidence might be
4 susceptible to more than one rational interpretation, the ALJ's decision should be
5 upheld. *See Ryan*, 528 F.3d at 1198 (citing *Burch*, 400 F.3d at 679); *see Robbins*,
6 466 F.3d at 882 ("If the evidence can support either affirming or reversing the ALJ's
7 conclusion, we may not substitute our judgment for that of the ALJ."). Accordingly,
8 the ALJ's finding that Plaintiff's statements were not fully consistent with the
9 medical record constitutes a specific, clear and convincing reason for discounting
10 Plaintiff's subjective symptom testimony.

11 **b. Reason No. 2: Inconsistent With Conservative**
12 **Treatment**

13 An ALJ may discount a claimant's testimony based on routine and
14 conservative treatment. *See Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007)
15 ("[E]vidence of 'conservative treatment' is sufficient to discount a claimant's
16 testimony regarding severity of an impairment."); *see also Meanel v. Apfel*, 172 F.3d
17 1111, 1114 (9th Cir. 1999) (rejecting a plaintiff's complaint "that she experienced
18 pain approaching the highest level imaginable" as "inconsistent with the 'minimal,
19 conservative treatment' that she received").

20 The ALJ found that treatment recommendations were not consistent with
21 Plaintiff's alleged difficulties sitting, standing, and walking. (AR 30.) Specifically,
22 the ALJ relied on the fact that Plaintiff was never prescribed the use of cane. (*Id.*)
23 The ALJ also pointed to the fact that Plaintiff was prescribed a back brace, but was
24 informed that she could discontinue the use of her brace at her convenience. (*Id.*; *see*
25 AR 633.)

26 The Court finds that the ALJ properly relied on the inconsistency between
27 Plaintiff's claims and the recommended treatment in discounting Plaintiff's
28 subjective symptom testimony regarding her alleged difficulties in sitting, standing,

1 and walking. *See Turner v. Colvin*, No. 15-CV-00213-RS, 2016 WL 6039203, at *5
2 (N.D. Cal. Mar. 29, 2016) (holding ALJ properly discredited claimant’s “testimony
3 about her limitations regarding walking, standing, and sitting for long periods of
4 time” where ALJ relied on the fact that claimant was not prescribed a cane, was
5 prescribed Tramadol for pain, and used over-the-counter pain medication); *Esquivias*
6 *v. Astrue*, No. CV 11-6183-SP, 2012 WL 2458116, at *6 (C.D. Cal. June 26, 2012)
7 (“ALJ properly discounted plaintiff’s subjective complaints as inconsistent with her
8 conservative treatment” where ALJ cited to the fact that Plaintiff was not prescribed
9 a cane, walker, or wheelchair).

10 **c. Reason No. 3: Activities of Daily Living⁴**

11 Inconsistencies between symptom allegations and daily activities may act as a
12 clear and convincing reason to discount a claimant’s credibility. *See Tommasetti*,
13 533 F.3d at 1039; *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991). But a
14 claimant need not be utterly incapacitated to obtain benefits. *Fair v. Bowen*, 885 F.2d
15 597, 603 (9th Cir. 1989).

16 Plaintiff contends that throughout this process she has maintained that “while
17 she is capable of engaging in brief and minimal activities of daily living, she is
18 incapable of persisting at any of those activities of daily living over a complete 8 hour
19 period of time.” (JS 20.) Furthermore, she contends that she “certainly would be
20 incapable of persisting at work related activities over an 8 hour[] work day and/or 40

21 ⁴ After summarizing Plaintiff’s symptom testimony, the ALJ noted that Plaintiff
22 “provided conflicting accounts concerning the degree to which her impairments limit
23 her activities of daily living.” (AR 30.) The ALJ stated that Plaintiff’s “written
24 statements reflect far greater functional abilities than [her] testimony.” (*Id.*) Plaintiff
25 contends that any inconsistencies in the record “simply reflect a progression of
26 symptoms and additional impairments such as the fact that Plaintiff’s lumbar spinal
27 impairments appears to have substantially worsened in December of 2016 when she
28 appears to have suffered an acute compression fracture of her L3 vertebra.” (JS 18-
19.) However, the Court’s review of the ALJ’s decision shows that the ALJ did not
rely on inconsistencies between Plaintiff’s written statements and hearing testimony
in discounting her subjective statements. (*See* AR 29-33.)

1 hour work week.” (*Id.*) Plaintiff argues that her statements are supported by her
2 sister’s third-party function report.⁵ (*Id.*)

3 The ALJ discounted Plaintiff’s statements because the records show Plaintiff
4 engaged in activities that exceed the degree of limitation alleged. (AR 33; *see* AR
5 29-33.) The ALJ found that Plaintiff’s statements regarding her alleged difficulty
6 holding items and typing on a computer were not well supported by the medical
7 evidence or her activities. (AR 31.) The ALJ relied on Plaintiff’s ability to use her
8 hands and fingers to play computer games, feed her dog, and complete written forms
9 and standardized tests. (*Id.*, citing AR 53-55, 255, 275-83, 311-19, 457-62.)

10 As to Plaintiff’s claims regarding the alleged difficulties with diarrhea, the ALJ
11 found that Plaintiff’s statements were only partially supported. (AR 31.) The ALJ
12 reasoned that Plaintiff’s symptoms did not “appear to occur so frequently as to restrict
13 her to home, because she has reported attending church and shopping in stores on a
14 regular basis.” (*Id.*, citing AR 255.) The ALJ also relied on the fact that Plaintiff
15 obtained a letter from a psychiatrist prescribing Plaintiff an emotional support
16 animal, which the ALJ notes would be “unnecessary” if Plaintiff “is unable to ‘stray
17 far’ from home.” (AR 31, citing AR 631.)

18 Similarly, the ALJ found that the evidence did not generally support the degree
19 of limitation alleged as to Plaintiff’s difficulties concentrating and being easily
20 confused. (AR 31.) The ALJ relied on Plaintiff’s function report where she indicated
21 “she spends more than 12 hours per day watching television and using a computer.”
22 (*Id.*, citing AR 315; *see* AR 255, 278.) The ALJ noted that “[s]ustaining 12 hours of
23 activity generally requires concentration, persistence, and pace.” (AR 31.)
24 Additionally, in discounting Plaintiff’s alleged difficulty in understanding

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26
27 ⁵ The ALJ gave limited weight to the third-party function reports prepared by
28 Plaintiff’s sister, Cynthia Terbest. (AR 33.) Plaintiff does not challenge the ALJ’s
findings as to the third-party function reports. (*See* JS 1-32.)

1 technology, the ALJ pointed to Plaintiff’s ability to play computer games, shop
2 online, and use the voice assistant to send text messages. (*Id.*)

3 The mere ability to perform some tasks is not necessarily indicative of an
4 ability to perform work activities because “many home activities are not easily
5 transferable to what may be the more grueling environment of the workplace, where
6 it might be impossible to periodically rest or take medication.” *Fair*, 885 F.2d at 603;
7 *see also Molina*, 674 F.3d at 1112-13 (the ALJ may discredit a claimant who
8 “participat[es] in everyday activities indicating capacities that are transferable to a
9 work setting”). For example, a claimant’s ability to watch television is not an activity
10 that is easily transferable to the workplace. *See Orn*, 495 F.3d at 639 (finding that
11 “reading, watching television, and coloring in coloring books are activities that are
12 so undemanding that they cannot be said to bear a meaningful relationship to the
13 activities of the workplace”).

14 However, the ALJ may also rely on a claimant’s “daily activities to form the
15 basis of an adverse credibility determination” where the activities contradict the
16 claimant’s other testimony. *Orn*, 495 F.3d at 639; *see Burkett v. Berryhill*, 732 F.
17 App’x 547, 552 (9th Cir. 2018) (“While transferability of skills to a work setting is
18 one way in which an ALJ may consider a claimant’s daily activities, an ALJ may also
19 discount claimant testimony where reported daily activities contradict the claimant’s
20 alleged extent of her limitations.”). Here, the ALJ found several of Plaintiff’s claims
21 were inconsistent with Plaintiff’s activities. (*See* AR 30-32.) For example, the ALJ
22 compared Plaintiff’s testimony that she had difficulty holding items or typing and
23 Plaintiff’s statements that she played computer games, fed her dog, and completed
24 written forms and tests. (AR 31.) Similarly, the ALJ compared Plaintiff’s testimony
25 that she is unable to “stray far” from home due to her difficulties with diarrhea and
26 evidence showing Plaintiff attended church, shopped in stores, and obtained a
27 prescription for an emotional support animal. (*Id.*) The ALJ properly cited numerous
28 examples identifying inconsistencies between Plaintiff’s testimony and the activities

1 she engaged in. *See Burkett*, 732 F. App'x at 552 (finding ALJ did not err in relying
2 on claimant's activities where "ALJ cited examples in the record illustrating
3 inconsistencies between [claimant's] testimony concerning the limiting effects of her
4 symptoms and her activities"). Accordingly, this was a specific, clear and convincing
5 reason for discounting Plaintiff's subjective symptom testimony.

6 **6. Conclusion**

7 The Court finds that the ALJ gave specific, clear and convincing reasons for
8 discounting Plaintiff's subjective symptom testimony.

9 **B. The ALJ Properly Considered the Relevant Medical Evidence of** 10 **Record in Assessing Plaintiff's RFC**

11 Plaintiff contends that the ALJ failed to properly consider significant medical
12 evidence of record as to Plaintiff's physical and mental impairments in assessing
13 Plaintiff's RFC. (JS 5; *see* JS 6-12.)

14 The ALJ is responsible for assessing a claimant's RFC "based on all of the
15 relevant medical and other evidence." 20 C.F.R. §§ 404.1545(a)(3), 404.1546(c); *see*
16 *Robbins*, 466 F.3d at 883 (citing SSR 96-8p, 1996 WL 374184, at *5 (July 2, 1996)).
17 In doing so, the ALJ may consider any statements provided by medical sources,
18 including statements that are not based on formal medical examinations. *See* 20
19 C.F.R. §§ 404.1513(a), 404.1545(a)(3). An ALJ's determination of a claimant's
20 RFC must be affirmed "if the ALJ applied the proper legal standard and his decision
21 is supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th
22 Cir. 2005); *accord Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th
23 Cir. 1999).

24 **1. Opinion Evidence**

25 Courts give varying degrees of deference to medical opinions based on the
26 provider: (1) treating physicians who examine and treat; (2) examining physicians
27 who examine, but do not treat; and (3) non-examining physicians who do not examine
28 or treat. *Valentine v. Comm'r, Soc. Sec. Admin.*, 574 F.3d 685, 692 (9th Cir. 2009).

1 Most often, the opinion of a treating physician is given greater weight than the
2 opinion of a non-treating physician, and the opinion of an examining physician is
3 given greater weight than the opinion of a non-examining physician. *See Garrison*
4 *v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).

5 The ALJ must provide “clear and convincing” reasons to reject the ultimate
6 conclusions of a treating or examining physician. *Embrey v. Bowen*, 849 F.2d 418,
7 422 (9th Cir. 1988); *Lester*, 81 F.3d at 830-31. When a treating or examining
8 physician’s opinion is contradicted by another opinion, the ALJ may reject it only by
9 providing specific and legitimate reasons supported by substantial evidence in the
10 record. *Orn*, 495 F.3d at 633; *Lester*, 81 F.3d at 830; *Carmickle v. Comm’r, Soc. Sec.*
11 *Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). “An ALJ can satisfy the ‘substantial
12 evidence’ requirement by ‘setting out a detailed and thorough summary of the facts
13 and conflicting evidence, stating his interpretation thereof, and making findings.’”
14 *Garrison*, 759 F.3d at 1012 (citation omitted).

15 **a. Mental Impairments**

16 In assessing Plaintiff’s mental RFC, the ALJ considered the opinions of
17 consultative examiner Anthony Benigno, Psy.D., state consultant Eugene Campbell,
18 Ph.D., and Plaintiff’s treating psychiatrist Grace Reid, M.D. (AR 32-33.)

19 Plaintiff contends that the ALJ’s rejection of Dr. Reid’s opinions constitutes
20 reversible error. (JS 8; *see* JS 6-8.) Plaintiff argues that the “[o]nly by rejecting the
21 opinions of the treating psychiatrist and attributing substantial weight to those of his
22 own consultants,” could the ALJ find the assessed mental RFC. (JS 6.) The
23 Commissioner contends that “the ALJ properly rejected the[] opinions as
24 unsupported by objective clinical findings and inconsistent with other evidence in the
25 record.” (JS 12; *see* JS 17-19.)

26 **i. Dr. Benigno**

27 On January 18, 2016, Dr. Benigno conducted a complete psychological
28 evaluation. (AR 457-62.) Plaintiff was alert and presented with a cooperative

1 attitude. (AR 459.) She demonstrated a willingness to complete tasks and appeared
2 to be putting forth her best effort. (*Id.*) Plaintiff “did not manifest any bizarre
3 behaviors, abnormal movements, tics or tremors.” (*Id.*) Her eye contact was
4 inappropriate. (*Id.*) Dr. Benigno found Plaintiff’s speech was clear and
5 understandable with no gross distortions of speech. (*Id.*) Plaintiff’s response time
6 and work pace were average. (*Id.*) She was oriented to person, time, place, and the
7 purpose of the examination, and was able to state her name, age, and date of birth.
8 (*Id.*) Plaintiff’s intellectual functioning was in the low average range. (*Id.*)

9 Dr. Benigno observed that Plaintiff’s thoughts were coherent and logical, and
10 the content was appropriate. (AR 459.) Plaintiff’s “mood was dysthymic with
11 restricted range of affect” and she reported symptoms of depression and anxiety. (*Id.*)
12 Plaintiff denied experiencing delusions or hallucinations, and Dr. Benigno found no
13 signs of perceptual disturbance or misinterpretation of consensual reality during the
14 exam. (*Id.*) Her immediate, recent, and remote memories were intact, and Plaintiff
15 was able to provide general details of her daily activities. (*Id.*) Plaintiff
16 “demonstrated an adequate attention span for answering interview questions and
17 following test instructions.” (*Id.*) She was also able to sustain concentration and
18 work without distraction during the performance tasks. (*Id.*) Her fund of knowledge
19 was adequate. (*Id.*) Plaintiff’s insight into her illness and judgment for
20 commonsense hypothetical events was adequate. (AR 460.)

21 Plaintiff completed the Trail Making Test, Part A and B, the Wechsler Adult
22 Intelligence Scale, and the Wechsler Memory Scale. (AR 460.) As to Trail A of the
23 Trail Making Test, Plaintiff’s results were “in the mildly impaired range of tasks
24 requiring sustained attention and visual tracking ability.” (*Id.*) Trail B was in the
25 normal range. (*Id.*) Plaintiff’s general intellectual functioning was in the low average
26 range. (*Id.*) Her general memory was in the low average range. (AR 461.)

27 After the examination, Dr. Benigno opined that Plaintiff’s “overall cognitive
28 ability falls within the low average range.” (AR 461.) Dr. Benigno found that

1 Plaintiff's "[p]robable DSM-IV diagnoses" included major depressive disorder, mild,
2 and personal psychosocial stressors. (*Id.*) Plaintiff had a GAF score of 70. (*Id.*)

3 Dr. Benigno opined that Plaintiff would be able to understand, remember, and
4 carry out short, simplistic instructions with no difficulty. (AR 461.) However,
5 Plaintiff would have mild difficulties understanding, remembering, and carrying out
6 detailed and complex instructions. (*Id.*) She would not have difficulty making
7 simplistic work-related decisions without special supervision or responding to
8 change in a normal workplace setting. (*Id.*) Plaintiff would have mild difficulty
9 complying with job rules such as safety and attendance. (*Id.*) Similarly, Plaintiff
10 would have mild difficulty maintaining persistence and pace in a normal workplace
11 setting. (*Id.*) Dr. Benigno also noted that Plaintiff had no history of interpersonal
12 difficulties and was socially appropriate with him. (*Id.*) He opined that Plaintiff
13 "presents no difficulty to interact appropriately with supervisors, coworkers[,] and
14 peers on a consistent basis." (*Id.*) Plaintiff appeared able to manage her own
15 finances. (*Id.*) She also arrived early to the examination. (*Id.*)

16 The ALJ gave Dr. Benigno's opinion significant weight because it was
17 "supported by the clinical findings from his examination." (AR 32.) "The opinion
18 of a consultative examiner, . . . may be relied upon by the ALJ to determine a
19 claimant's residual functional capacity if the opinion is supported by clinical tests
20 and observations upon examination." *Sheaffer v. Astrue*, No. EDCV 08-0998-JTL,
21 2009 WL 1531852, at *3 (C.D. Cal. June 2, 2009) (citing *Tonapetyan v. Halter*, 242
22 F.3d 1144, 1149 (9th Cir. 2001)). Here, Dr. Benigno's opinion was rendered after a
23 complete psychological evaluation, including a mental status examination, the Trail
24 Making Test, Part A and B, the Wechsler Adult Intelligence Scale, and the Wechsler
25 Memory Scale. (AR 32; *see* AR 457-62.) Because Dr. Benigno's opinion was
26 supported by the results of a complete psychological evaluation, the ALJ did not err
27 in giving significant weight to Dr. Benigno's opinion. *See Belmontez v. Colvin*, No.
28 ED CV 14-1590-PLA, 2015 WL 2063945, at *6 (C.D. Cal. May 4, 2015) (finding

1 ALJ did not err in assigning significant weight to consultative examiner’s opinion
2 where the opinion was “supported by [examiner’s] independent clinical findings”).

3 **ii. Dr. Campbell**

4 On February 8, 2016, Dr. Campbell reviewed Plaintiff’s disability and DIB
5 claim at the initial level. (AR 77-78, 89-90; *see* AR 72-83, 84-95.) Dr. Campbell
6 found that Plaintiff had a medically determinable impairment that did not satisfy the
7 diagnostic criteria and was nonsevere. (AR 77-78, 89-90.) Plaintiff was not
8 restricted in her activities of daily living. (AR 78, 90.) Dr. Campbell found Plaintiff
9 did not have difficulties maintaining social functioning. (*Id.*) She did not have
10 repeated episodes of decompensation, each of extended duration. (*Id.*) Plaintiff did
11 have mild difficulties maintaining, concentration, persistence, or pace. (*Id.*)

12 The ALJ gave significant weight to Dr. Campbell’s opinion that Plaintiff had
13 mild limitations as to concentration, persistence, and pace because the opinion was
14 consistent with the evidence available at the time of that review. (*Id.*) Additionally,
15 the ALJ noted that Plaintiff “made an effort to receive psychiatric treatment,” and he
16 gave Plaintiff’s “statements some benefit of the doubt and [found] that she is limited
17 to the above” RFC assessment. (AR 32-33.) Because the ALJ found Dr. Campbell’s
18 opinion was consistent with the evidence, the ALJ did not err in giving Dr.
19 Campbell’s opinion significant weight. *See Ruiz v. Colvin*, 638 F. App’x 604, 606
20 (9th Cir. 2016) (finding ALJ did not err in giving greatest weight to state consultants,
21 where ALJ found “their opinions consistent with the greater medical record, progress
22 and treating notes, and [claimant’s] description of her daily activities.”).

23 **iii. Dr. Reid**

24 In June 2017, Dr. Reid provided a “written response for the medical
25 management of” Plaintiff. (AR 625.) Dr. Reid explained she has been treating
26 Plaintiff for major depressive disorder, severe, recurrent since June 15, 2015. (*Id.*)
27 Dr. Reid noted that Plaintiff “was currently taking psychiatric medications for [her]
28 mood disorder” and benefits from her pet for emotional and psychological support.

1 (*Id.*) Dr. Reid opined that Plaintiff “needs to have [her] pet dog with [her] at all times,
2 if possible, as an adjunct non-pharmacological therapy for [her] psychiatric
3 diagnosis.” (*Id.*) Similarly, in August 2017, Dr. Reid prepared a letter requesting
4 that Plaintiff be allowed to travel with her emotional support animal in the cabin of
5 an aircraft. (AR 631.) Dr. Reid explained that Plaintiff “has certain limitations
6 related to social interactions and coping with stress and anxiety” which are alleviated
7 by her emotional support animal. (*Id.*)

8 On July 13, 2017, Dr. Reid prepared an assessment documenting Plaintiff’s
9 mental capacity. (AR 626-27.) She opined that Plaintiff has a medically verifiable
10 condition that would limit or prevent her from performing certain tasks. (AR 626.)
11 Plaintiff’s condition is chronic, and she is actively seeking treatment. (*Id.*) Dr. Reid
12 opined that Plaintiff is unable to work and has limitations that affect her ability to
13 work or participate in education or training. (*Id.*) Plaintiff’s condition does not
14 require someone to be in the home to care for her. (*Id.*)

15 As to Plaintiff’s mental capacity, Dr. Reid opined that Plaintiff “is unable to
16 concentrate or sustain attention or tolerate social interactions due to severe anxiety.”
17 (AR 627.) Similarly, due to severe anxiety, she cannot tolerate social interaction with
18 her peers or supervisors. (*Id.*) She experiences panic attacks with episodes of
19 significant nausea, shortness of breath, and heart palpitations. (*Id.*) Dr. Reid opined
20 that Plaintiff cannot concentrate. (*Id.*) Plaintiff is easily distracted as a result of
21 “significant medical illness of diarrhea and back pain, and has a short attention span.”
22 (*Id.*) Plaintiff “is unable to perform in stressful situations or environments due to
23 limited coping and stress management skills.” (*Id.*)

24 The ALJ gave Dr. Reid’s June 2017 assessment limited weight. (AR 33.)
25 Because Dr. Reid is a treating psychiatrist whose opinion has been contradicted by
26 Drs. Benigno and Campbell, the ALJ needed to provide specific and legitimate
27 reasons for giving Dr. Reid’s opinion limited weight. *See Lester*, 81 F.3d at 830
28 (“[I]f the treating doctor’s opinion is contradicted by another doctor, the

1 Commissioner may not reject this opinion without providing ‘specific and legitimate
2 reasons’ supported by substantial evidence in the record for so doing.”).

3 First, the ALJ reasoned that Dr. Reid’s assessment was inconsistent with the
4 objective evidence. (AR 33.) An ALJ “need not accept the opinion of any physician,
5 including a treating physician, if that opinion is brief, conclusory, and inadequately
6 supported by clinical findings.” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.
7 2002). The ALJ noted that Dr. Reid’s assessment did “not contain citations to
8 supporting clinical findings or other objective evidence.” (AR 33.) Plaintiff points
9 to evidence in the record which allegedly supports Dr. Reid’s assessment. (*See* JS 6-
10 7.) However, Dr. Reid does not rely on these records, or any records in support of
11 her opinion. Additionally, the ALJ explained that Dr. Reid “repeats [Plaintiff’s]
12 allegations that she is unable to concentrate or sustain attention.” (AR 33.) Plaintiff’s
13 statements were inconsistent with Dr. Benigno’s examination, where the Trail
14 Making Test showed “mild to no impairment” in Plaintiff’s ability to sustain
15 sufficient attention, and the “WMS-IV” showed Plaintiff’s memory was in the low
16 average range. (*Id.*) The ALJ properly discounted Dr. Reid’s opinion on the basis
17 that her assessment was inconsistent with the objective evidence. *See Maloof v.*
18 *Berryhill*, No. 8:16-CV-01880-SK, 2018 WL 1163003, at *1 (C.D. Cal. Jan. 22,
19 2018) (affirming ALJ’s assessment of treating physician’s opinion, even where
20 claimant cited to evidence in support of the opinion, where ALJ found the opinion
21 was conclusory because the physician “provid[ed] very little explanation of the
22 evidence relied on in forming [it]” (alteration in original)); *Hernandez v. Colvin*, No.
23 ED CV 13-01385 RZ, 2014 WL 897268, at *1 (C.D. Cal. Mar. 5, 2014) (finding ALJ
24 gave specific and legitimate reasons for affording physician’s opinion little weight
25 where the opinion was not supported by “any objective clinical or diagnostic
26 finding,” the physician did not explain what the opinion was based on, and relied
27 “heavily” on the claimant’s statements).

28 ///

1 Second, the ALJ explained that Dr. Reid’s assessment was inconsistent with
2 Plaintiff’s “own description of her activities of daily living.” (AR 33.) An ALJ may
3 properly discount a physician’s opinion that is inconsistent with a claimant’s daily
4 activities. *See Rollins*, 261 F.3d at 856. Specifically, the ALJ relied on Plaintiff’s
5 statements that she “spends more than 12 hours per day pursuing hobbies and
6 interests, such as watching television, using a computer, reading, and listening to
7 music.” (AR 33 (internal citations omitted); *see* AR 53-55, 315, 459.) In discussing
8 Plaintiff’s statements, the ALJ reasoned that “sustaining 12 hours of activity
9 generally requires concentration, persistence, and pace.” (AR 32.) This was a
10 specific and legitimate reason for giving Dr. Reid’s opinion limited weight. *See*
11 *Green v. Berryhill*, 731 F. App’x 596, 598-99 (9th Cir. 2018) (“The ALJ properly
12 rejected [physician’s] opinion based on specific and legitimate reasons, including
13 lack of clinical support for [the] opinion prior to March 2011, inconsistency with the
14 treatment record, and inconsistency with [claimant’s] activities.”); *Wheatley v.*
15 *Berryhill*, 706 F. App’x 424, 425 (9th Cir. 2017) (finding ALJ gave specific and
16 legitimate reasons for giving “little to no weight” to physician’s opinion that was
17 inconsistent with medical record and claimant’s daily activities).

18 Accordingly, the ALJ provided specific and legitimate reasons for giving Dr.
19 Reid’s June 2017 assessment limited weight.

20 Finally, the ALJ gave no weight to Dr. Reid’s opinion that Plaintiff requires
21 an emotional support animal because the opinion did not provide “specific
22 information regarding [Plaintiff’s] work-related abilities” (AR 33). The ALJ
23 properly rejected Dr. Reid’s statements because they were conclusory and were not
24 supported by clinical findings. *See Thomas*, 278 F.3d at 957.

25 **b. Physical Impairments**

26 In assessing Plaintiff’s physical RFC, the ALJ considered the opinions of
27 consultative examiner Azizollah Karamlou, M.D., and state consultants Michael
28 Douglas, M.D. and C. Scott M.D. (AR 31-32.)

1 Plaintiff contends that “the ALJ’s reliance on the consultative examiner’s
2 opinion and the state agency opinions all of which were rendered in 2016 also
3 constitutes reversible error” because “those opinions were rendered without the
4 benefit of the medical evidence of record in this case including the two MRI reports
5 documenting severe findings in Plaintiff’s lumbar spine.” (JS 12.) The
6 Commissioner contends that “the ALJ’s RFC finding is supported by substantial
7 evidence and free from legal error.” (JS 17.) The Commissioner also notes that
8 “Plaintiff does not present any medical opinion evidence suggesting that Plaintiff had
9 further physical limitations than those found by the ALJ.” (*Id.*)

10 **i. Dr. Karamlou**

11 On January 6, 2016, Dr. Karamlou conducted an internal medicine
12 consultation, including a physical examination. (AR 450-54.) Plaintiff was noted to
13 be well-developed, appeared her stated age, and had exogenous obesity. (AR 451.)
14 She was not in acute distress. (*Id.*) Plaintiff had normal gait and balance, and did
15 not require the use of an assistive device. (*Id.*) Her skin was warm and dry, with no
16 lesions or jaundice. (*Id.*)

17 As to Plaintiff’s nodes, Dr. Karamlou documented “no cervical,
18 supraclavicular, axillary or inguinal adenopathy.” (AR 451.) Her extraocular
19 muscles were intact, and fundi were benign without papilledema, hemorrhages or
20 exudates. (*Id.*) Dr. Karamlou did not identify any visual field deficits or scleral
21 icterus. (*Id.*)

22 Plaintiff’s neck was supple and had a midline trachea. (*Id.*) Plaintiff’s range
23 of motion of her cervical spine was within normal limits. (*Id.*) Plaintiff had
24 “[n]ormoactive bowel sounds,” and nondistended, nontender abdomen. (*Id.*) There
25 was “no hepatosplenomegaly, ascites or masses.” (*Id.*)

26 As to Plaintiff’s back, there was local tenderness with no evidence of muscle
27 spasm or radiculopathy. (AR 452.) Plaintiff’s range of motion was decreased,
28 flexion was 65/90 degrees and extension 10/20 degrees. (*Id.*) Plaintiff’s extremities

1 had “[p]eripheral pulses 2+ and symmetrical throughout.” (*Id.*) There was no
2 clubbing, cyanosis, or pedal edema, and no joint deformities, effusions, warmth,
3 swelling, crepitus, or pain on motion. (*Id.*) There was no laxity of any joint. (*Id.*)

4 Dr. Karamlou documented tenderness in Plaintiff’s shoulders and difficulty
5 fully raising her arms above her head. (AR 452.) Plaintiff’s wrist and elbow range
6 of motion were grossly within normal limits bilaterally. (*Id.*) Her
7 metacarpophalangeal, proximal interphalangeal, and distal interphalangeal joint
8 flexion was grossly within normal limits bilaterally. (*Id.*) Plaintiff’s hip, knee, and
9 ankle range of motion are grossly within normal limits bilaterally. (*Id.*)

10 A neurologic exam showed Plaintiff’s cranial nerves II-XII were intact. (AR
11 452.) She had normal muscle bulk and tone without atrophy. (*Id.*) Plaintiff’s
12 sensation was “[i]ntact to light touch throughout” and she had “good hand
13 coordination.” (AR 452-53.) Her “[d]eep tendon reflexes are 1+ and symmetrical
14 throughout.” (AR 453.)

15 Dr. Karamlou found Plaintiff had hypertension, under treatment; atypical chest
16 pain; low back pain syndrome with mild-intensity pain and tendonitis of the
17 shoulders; and plantar fasciitis and calcaneal spur, which is painful on walking. (AR
18 453.) Plaintiff was on an anti-inflammatory agent. (*Id.*)

19 As to Plaintiff’s functional limitations, Dr. Karamlou opined Plaintiff was able
20 to lift and carry 20 pounds occasionally, and 10 pounds frequently. (AR 453.) She
21 could walk and stand for six hours out of an eight-hour day. (*Id.*) She could sit for
22 six hours out of an eight-hour day. (*Id.*) She could push and pull frequently with her
23 upper and lower extremities. (*Id.*) Plaintiff could bend, stoop, kneel, and crawl
24 frequently. (*Id.*) Dr. Karamlou also opined that there was “no impairment with
25 handling and fingering, except for fully raising the arms above the head.” (*Id.*)
26 Plaintiff could walk on uneven terrain, climb ladders, and work at heights. (*Id.*)
27 Plaintiff had no limitation as to her ability to hear and see. (AR 454.) She did not
28 need an assistive device. (*Id.*)

1 After summarizing Dr. Karamlou’s objective findings and opinion, the ALJ
2 gave the opinion great weight because the assessment was “supported by the
3 objective findings from his examination.” (AR 31.) As discussed above, an ALJ
4 may properly rely on the opinion of a consultative examiner, where the examiner’s
5 opinion is based on independent clinical findings. *See Tonapetyan*, 242 F.3d at 1149;
6 *Sheaffer*, 2009 WL 1531852, at *3. Because Dr. Karamlou’s opinion was based on
7 his own independent examinations of Plaintiff (*see* AR 450-54), the ALJ did not err
8 in giving the opinion great weight. *See Tonapetyan*, 242 F.3d at 1149.

9 **ii. Drs. Douglas and Scott**

10 State agency consultant Dr. Douglas reviewed Plaintiff’s applications (*see* AR
11 72-83, 84-95), and Dr. Scott reviewed the applications upon reconsideration (*see* AR
12 98-109, 110-21.). Dr. Douglas found Plaintiff had exertional limitations. (AR 79,
13 91.) Plaintiff could occasionally lift and/or carry 20 pounds, and could frequently
14 lift and or carry 10 pounds. (AR 79, 91.) She could stand and/or walk with normal
15 breaks for a total of six hours in an eight-hour workday. (AR 79, 91-92.) She could
16 also sit for a total of six hours in an eight-hour workday. (AR 79-80, 92.) Her ability
17 to push and/or pull was limited in her upper and lower extremities due to back pain
18 with decreased range of motion and “obesity, freq.” (AR 80, 92.)

19 As to postural limitations, Dr. Douglas opined Plaintiff could balance, stoop,
20 kneel, crouch, and crawl frequently. (AR 80, 92.) Plaintiff’s ability to climb ramps,
21 stairs, ladders, ropes, and scaffolds was unlimited. (AR 80, 92.) Her ability to reach
22 overhead was limited due to tenderness in shoulders bilaterally and difficulty fully
23 raising her arms above head, frequently. (AR 80, 92.) However, her ability to handle,
24 finger, and feel was unlimited. (AR 80-81, 92-93.) Plaintiff had no visual,
25 communicative, or environmental limitations. (AR 81, 93.)

26 Dr. Douglas explained that Plaintiff had a history of hypertension, but there
27 was “no evidence of end organ damage stroke.” (AR 81, 93.) Plaintiff alleged “heel
28 spurs and problems walking,” but “upon exam she ha[d] normal gait and balance and

1 does not require an [assistive device] for ambulation.” (*Id.*) As to Plaintiff’s back
2 pain complaints, Dr. Douglas explained that she had a decreased range of motion, but
3 there was “no evidence of spasm or radiculopathy and no evidence of neurological
4 deficits.” (*Id.*) Plaintiff had tenderness in her shoulders bilaterally and difficulty
5 fully raising her arms above her head. (*Id.*) Dr. Douglas found that there was no
6 evidence that Plaintiff’s irritable bowel syndrome was functionally limiting. (*Id.*) In
7 assessing Plaintiff’s RFC, Dr. Douglas considered Plaintiff’s obesity and also found
8 that the “[c]ombined effects of all impairments support limitations reflected in RFC.”
9 (*Id.*) Upon reconsideration, Dr. Scott agreed with Dr. Douglas’s assessment and
10 “affirmed” it as written. (AR 107, 119.)

11 The ALJ gave great weight to the opinions of Drs. Douglas and Scott because
12 the assessments were “consistent with the objective findings in the medical file.”
13 (AR 31-32.) Additionally, the ALJ noted that “[s]tate agency medical agency
14 consultants are highly qualified physicians who are experts in Social Security
15 disability evaluation.” (*Id.*)

16 Plaintiff’s argument that the ALJ erred in giving great weight to the opinions
17 of Drs. Douglas and Scott because those opinions were rendered without the benefit
18 of all of the medical evidence is unpersuasive. (*See JS 12.*) The fact that the state
19 agency consultant did not review records beyond the date of their review “is not an
20 error.” *See Sportsman v. Colvin*, 637 F. App’x 992, 995 (9th Cir. 2016). The ALJ
21 properly reviewed the entire record and found that the opinions of Drs. Douglas and
22 Scott were “consistent with the objective medical findings in the medical file” (AR
23 32). *See Sportsman*, 637 F. App’x at 995 (stating that it is not error for a state agency
24 consultant to fail to review subsequent medical records, if the ALJ reviews the entire
25 record and concludes that the later-dated medical records are consistent with the
26 overall medical evidence). Thus, the ALJ did not err in assigning great weight to the
27 opinions of Drs. Douglas and Scott. *See Ruiz v. Colvin*, 638 F. App’x 604, 606 (9th
28 Cir. 2016) (finding that the ALJ did not err in giving the greatest weight to non-

1 examining state agency medical consultants because “the ALJ found their opinions
2 consistent with the greater medical record, progress and treating notes, and [the
3 plaintiff]’s description of her daily activities”); *see also Magallanes v. Bowen*, 881
4 F.2d 747, 752 (9th Cir. 1989) (“[T]he reports of consultative physicians called in by
5 the Secretary may serve as substantial evidence.”).

6 **2. Objective Medical Evidence**

7 Plaintiff points to other evidence in support of her contention that the ALJ
8 failed to properly assess her RFC. (JS 5-12.) She contends that “[n]owhere in the
9 [ALJ’s] unfavorable decision does he even mention the two MRIs of Plaintiff’s
10 lumbar spine which were performed in” March 2017 and May 2017, “which reveal
11 significant findings which are consistent with and supportive of Plaintiff’s subjective
12 complaints.” (JS 11-12). These MRIs document a compression fracture of the L3
13 vertebral body. (AR 578-79, 622-23)

14 While Plaintiff contends that the ALJ did not mention the two MRIs in early
15 2017, the ALJ did note that Plaintiff “was prescribed a back brace for a compression
16 fracture, the injury healed and in August 2017 [Plaintiff’s] doctor advised her that
17 she could discontinue the back brace.” (*See* AR 30, citing AR 633.) “[T]he ALJ
18 does not need to ‘discuss every piece of evidence’” when “interpreting the evidence
19 and developing the record.” *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1012
20 (9th Cir. 2003) (citation omitted). As discussed above in connection with Plaintiff’s
21 subjective complaints, the ALJ thoroughly reviewed the medical records presented
22 by Plaintiff. (*See* AR 29-33.) Where, as here, the evidence might be susceptible to
23 more than one rational interpretation, the ALJ’s decision should be upheld. *See Ryan*,
24 528 F.3d at 1198 (citing *Burch*, 400 F.3d at 679); *see Robbins*, 466 F.3d at 882.

25 **3. Conclusion**

26 In sum, the Court finds that the ALJ properly considered the relevant medical
27 evidence of record in assessing Plaintiff’s RFC.

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1 **C. The ALJ’s Conclusions at Step Four as to Plaintiff’s Past Relevant**
2 **Work is Supported by Substantial Evidence**

3 Plaintiff contends that the ALJ’s decision is “not supported by substantial
4 evidence in that the ALJ’s conclusions at Step Number Four of the Sequential
5 Evaluation Process are based upon defective vocational expert testimony and
6 inconsistent with the description of Plaintiff’s past relevant work in the Dictionary of
7 Occupational Titles and Selected Characteristics.” (JS 26; *see* JS 26-28.)
8 Specifically, Plaintiff contends that the Dictionary of Occupational Titles (“DOT”)
9 description of Plaintiff’s past work and the VE’s testimony is inconsistent with the
10 assessed RFC limiting Plaintiff to occasional work contact with others. (JS 27; *see*
11 AR 29.)

12 The Commissioner contends “the ALJ properly found that Plaintiff could
13 perform her past relevant work as a storage rental facility clerk.” (JS 29; *see* JS 29-
14 30.) The Commissioner contends that the ALJ was allowed to rely on the VE’s
15 testimony. (JS 29-30.)

16 “At step four of the sequential analysis, the claimant has the burden to prove
17 that he cannot perform his prior relevant work ‘either as actually performed or as
18 generally performed in the national economy.’” *Carmickle*, 533 F.3d at 1166
19 (quoting *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002)). However, the ALJ
20 has the duty to make the requisite factual findings to support the conclusion. *Pinto*
21 *v. Massanari*, 249 F.3d 840, 844 (9th Cir. 2001). “This requires specific findings as
22 to the claimant’s residual functional capacity, the physical and mental demands of
23 the past relevant work, and the relation of the residual functional capacity to the past
24 work.” *Id.* at 845 (citing SSR 82-62, 1982 WL 31386 (Jan. 1, 1982)).

25 The VE’s testimony may serve as substantial evidence to support an ALJ’s
26 step four finding. *See Bailey v. Astrue*, No. EDCV 09-1437-RC, 2010 WL 3369152,
27 at *5 (C.D. Cal. Aug. 24, 2010) (“vocational expert’s testimony constitutes
28 substantial evidence to support the ALJ’s Step Four determination that [claimant] can

1 perform his past relevant work.”). An ALJ may rely on the testimony of a vocational
2 expert that contradicts the DOT, if the record contains “persuasive evidence to
3 support the deviation.” *Pinto*, 249 F.3d at 846 (quoting *Johnson v. Shalala*, 60 F.3d
4 1428, 1435 (9th Cir. 1995)). “[I]n order for an ALJ to rely on a job description in the
5 [DOT] that fails to comport with a claimant’s noted limitations, the ALJ must
6 definitively explain this deviation.” *Id.* at 847. “Evidence sufficient to permit such
7 a deviation may be either specific findings of fact regarding the claimant’s residual
8 functionality, or inferences drawn from the context of the expert’s testimony.” *Lopez*
9 *v. Astrue*, No. CV 12-3036 JC, 2012 WL 3711084, at *3 (C.D. Cal. Aug. 28, 2012).

10 Here, the ALJ found that Plaintiff could perform her past work as a storage-
11 facility rental clerk and that the “work does not require the performance of work-
12 related activities precluded by” Plaintiff’s RFC. (AR 33.) The ALJ noted that
13 Plaintiff actually performed the work as classified in the DOT. (AR 34.) At the
14 hearing, the ALJ presented the VE with a hypothetical person sharing the same
15 general RFC as Plaintiff. (AR 66-67.) The VE testified that a hypothetical person
16 with the same general RFC as Plaintiff would be able to performs the job of storage-
17 facility rental clerk as described in the DOT. (AR 67.)

18 The VE addressed the alleged deviation from the DOT’s description. (*See* AR
19 67-68). The VE did note that it was “a little tricky,” but that based on her experience,
20 storage facility rental clerks work more independently and Plaintiff’s limitation to
21 only occasional interaction with others is not an issue because they are not in
22 “constant contact with people.” (*Id.*) The VE testified that Plaintiff’s limitation to
23 occasional contact with others does not preclude Plaintiff from performing her past
24 work as described by the DOT. (AR 67.) The VE explained that the DOT does not
25 list the level of interaction with others, and that her testimony is based on her
26 experience in placing people in those jobs. (*Id.*) The ALJ found the VE’s
27 “explanation to be reasonable and accepted the testimony in accordance with

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1 SSR 00-4p.”⁶ (AR 34.) Accordingly, the ALJ did not err in relying on the VE’s
2 testimony at step four. *See Buckner-Larkin v. Astrue*, 450 F. App’x 626, 628-29 (9th
3 Cir. 2011) (affirming in the context of step five the ALJ’s reliance on VE testimony
4 where VE “noted that although the DOT does not discuss a sit/stand option, his
5 determination was based on his own labor market surveys, experience, and research.
6 Therefore, the conflict between the DOT and the [VE] was addressed and explained
7 by the [VE], and the ALJ addressed this in the decision.”); *see also Bayliss*, 427 F.3d
8 at 1217 (“The hypothetical that the ALJ posed to the VE contained all of the
9 limitations that the ALJ found credible and supported by substantial evidence in the
10 record. The ALJ’s reliance on testimony the VE gave in response to the hypothetical
11 therefore was proper.”).

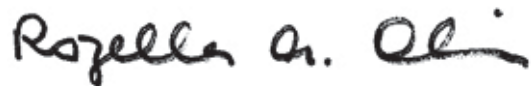
12 Thus, because the ALJ properly relied on the VE’s testimony, the ALJ’s
13 conclusion at step four is supported by substantial evidence.

14 **V. CONCLUSION**

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

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

19
20 DATED: April 24, 2020



21 _____
22 ROZELLA A. OLIVER
23 UNITED STATES MAGISTRATE JUDGE

24 **NOTICE**

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

27 _____
28 ⁶ Social Security Ruling 00-4p clarifies how the Social Security Administration uses
the testimony of VEs and vocational specialists, including how conflicts between
testimony and the DOT are resolved and what constitutes a reasonable explanation
of the conflict. SSR 00-4p, 2000 WL 1898704 (Dec. 4, 2000).