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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MELODY SOYKA,
Plaintiff,

v.

NANCY BERRYHILL,¹
Acting Commissioner of the
Social Security Administration,
Defendant.

Case No. SACV 16-00864 SS

MEMORANDUM DECISION AND ORDER

I.

INTRODUCTION

Melody Soyka ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (the "Commissioner" or "Agency") denying her

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security and is substituted for Acting Commissioner Carolyn W. Colvin in this case. See 42 U.S.C. § 205(g).

1 application for Disability Insurance Benefits ("DIB"). On May 10,
2 2016, Plaintiff filed a complaint (the "Complaint") commencing the
3 instant action. On October 4, 2016, Defendant filed an Answer to
4 the Complaint (the "Answer") along with the Administrative Record
5 ("AR"). On November 8, 2016, Plaintiff filed a memorandum in
6 support of the Complaint ("Pl. MSO"). On January 17, 2017,
7 Defendant filed a memorandum in support of the Answer ("Def. MSO").
8 On January 31, 2017, Plaintiff filed a reply (the "Reply"). The
9 parties consented, pursuant to 28 U.S.C. § 636(c), to the
10 jurisdiction of the undersigned United States Magistrate Judge.
11 (Dkt. Nos. 7, 12). For the reasons stated below, the Court AFFIRMS
12 the Commissioner's decision.

13 14 **II.**

15 **PROCEDURAL HISTORY**

16
17 Plaintiff filed an application for DIB on September 5, 2013.
18 (AR 118-121). Plaintiff alleged a disability onset date of August
19 6, 2012. (AR 118). The Agency denied Plaintiff's application on
20 December 30, 2013. (AR 60-62). On January 29, 2014, Plaintiff
21 requested a hearing before an Administrative Law Judge ("ALJ").
22 (AR 63-64). On September 12, 2014, ALJ Joan Ho conducted a hearing
23 to review Plaintiff's claim. (AR 24-48). Plaintiff, represented
24 by Troy Monge, testified before the ALJ. (AR 30-43). At the
25 hearing, Plaintiff requested to amend her alleged disability onset
26 date to July 16, 2013. (AR 29). Vocational expert ("VE") Susan
27 Allison also testified at the hearing. (AR 44-47). On November
28

1 12, 2014, ALJ Ho found that Plaintiff was not disabled under the
2 Social Security Act. (AR 9-20). Plaintiff sought review of the
3 ALJ's decision before the Appeals Council on January 7, 2015. (AR
4 7-8). On March 25, 2016, the Appeals Council denied review. (AR
5 1-3). As such, the ALJ's decision became the final decision of
6 the Commissioner. (AR 1). Plaintiff commenced the instant action
7 on May 10, 2016. (Dkt. No. 1).

8 9 **III.**

10 **FACTUAL BACKGROUND**

11
12 Plaintiff was born on March 10, 1958. (AR 118). She was 55
13 years old as of the alleged disability onset date of July 16, 2013.
14 She was 56 years old when she appeared before the ALJ. (AR 30).
15 Plaintiff completed the twelfth grade and received a high school
16 diploma. (AR 31, 202). For fifteen years prior to her alleged
17 disability onset date, Plaintiff worked as a nanny. (AR 134, 139).
18 Prior to that, Plaintiff worked as a file clerk, preschool teacher,
19 and cashier. (AR 202).

20
21 In the Disability Report, Plaintiff alleged that back
22 problems, peripheral neuropathy, chondromalacia patellae,
23 ulcerative colitis, a learning disability, osteoporosis, and
24 "knees, stomach, etc." limit her ability to work. (AR 132).
25 According to medical records, Plaintiff has chronic low back pain
26 that worsened in September of 2012 when a vehicle that was backing
27 up struck her car. (AR 215).

1 At the hearing, Plaintiff testified that she no longer has
2 problems with ulcerative colitis (AR 36), but that she has
3 "scoliosis, arthritis ... osteoporosis sponlykiosis [phonetic] ...
4 [and] neuritis." (AR 35).

5
6 **A. Plaintiff's Testimony**

7
8 Plaintiff testified that she stopped working on August 6, 2012
9 because she "fractured [the] 5th metatarsal in [her] left foot."
10 (AR 32). She was out on disability from August until October and
11 was subsequently let go for not coming back to work at a particular
12 time. (Id.). She testified that, after this injury, she received
13 Worker's Compensation for her medical bills. (Id.). She also
14 testified that she was on unemployment from October 12, 2012 until
15 December 2013. (Id.).

16
17 Plaintiff testified that her physician restricted her to
18 standing and walking twenty-five percent of the time and sitting
19 only a certain percentage of the time. (AR 33). She testified that
20 she looked for work adhering to these restrictions but was unable
21 to find anything. (AR 32). Specifically, Plaintiff testified that
22 she looked for office work and nanny jobs. She testified that,
23 had she received an office job allowing her to work within the
24 guidelines of her restrictions, she would have been able to do it.
25 (AR 33).

26
27 Plaintiff testified that she has been unable to work since
28 July 16, 2013 because her back has gotten increasingly worse and

1 she feels that "no employer will hire [her]" with her postural
2 restrictions. (AR 32). She stated that her back pain is "really
3 bad" and that every day she has to "lie in bed because the pain is
4 so great." (AR 34). Plaintiff further testified that the pain is
5 located in her lower back, below the belt line, and that doctors
6 gave her pain medications and back exercises to decrease her pain.
7 (Id.). Plaintiff testified that, in February of 2013, she did
8 these back exercises in her bed for 30 minutes a day, seven days a
9 week. (AR 41-42). Plaintiff testified that doctors have not
10 recommended any treatment aside from medication and physical
11 therapy (AR 38) and that doctors told her that there is nothing
12 they can do for her condition. (AR 35). She stated that while
13 one doctor recommended an epidural injection a long time ago, there
14 was no guarantee that it would help. (AR 39).

15
16 Plaintiff testified that she also has neuritis, meaning that
17 she does not have enough padding in her feet and is "stepping on
18 [her] nerves all the time, and [her] feet are in pain 24/7." (AR
19 35). Plaintiff testified that, on a scale from 1 to 10, she would
20 rate her pain an 8. (AR 38). When she takes her medication, which
21 consists of Evista for osteoporosis, Tylenol, Codeine, and another
22 medication that she could not recall the name of, Plaintiff would
23 rate her pain a 7. (AR 38) Plaintiff testified that, at the time
24 of the hearing, she did not have problems with ulcerative colitis
25 (AR 36), though it was alleged in the Disability Report. She also
26 stated that her knees pop if she repetitively kneels, bends, and
27 stoops, but that she stays in the guidelines of what she is not
28 supposed to do and has been doing well. (AR 42-43).

1 Plaintiff testified that she does household chores, including
2 loading the dishes as she eats her meals and the laundry when
3 necessary. (AR 43). She testified that she drives every day
4 without limits. (AR 31). However, she does not vacuum because it
5 hurts her back (AR 43) and she cannot lift two gallons of milk.
6 (AR 35).

7
8 **B. Treating Physicians**

9
10 **1. Diane A. Song, M.D.**

11
12 On March 29, 2013, Plaintiff visited her treating physician,
13 Dr. Diane A. Song, M.D., to follow-up on back pain. (AR 463).
14 Pursuant to this visit, Dr. Song completed a progress note, wherein
15 she stated that Plaintiff "completed a course of physical therapy
16 and was also evaluated by physical medicine and given work
17 restrictions." (AR 463). Under "Assessment/Plan", Dr. Song wrote
18 "Low back pain: Ok to return to work as a nanny." (Id.).

19
20 On July 16, 2013, Dr. Song completed a "Work Status Report",
21 diagnosing Plaintiff with "strain of back", stating that she "is
22 placed on permanent modified work/activity restrictions" including
23 that she could sit and stand "[o]ccasionally (up to 25% of shift)"
24 and could lift/carry/push/pull no more than 10 pounds. (AR 214).
25 On August 2, 2013, Dr. Song completed another "Work Status Report",
26 diagnosing Plaintiff with "osteoporosis, spondylosis cervical
27 joint wo myelopathy, chronic neck pain, strain of lumbar region"
28

1 and opining the same restrictions to Plaintiff's activities. (AR
2 213).

3
4 **2. Alberto Ezroj, M.D.**

5
6 On August 6, 2013, Plaintiff's treating family physician, Dr.
7 Alberto Ezroj, M.D., examined Plaintiff and noted that she had
8 normal range of motion of back without spasm or exacerbation of
9 pain, normal strength in her extremities, and did not exhibit any
10 musculoskeletal tenderness. (AR 514). Dr. Ezroj listed
11 Plaintiff's primary encounter diagnosis as "strain of back."
12 (Id.).

13
14 On September 11, 2013, Dr. Ezroj completed a "Medical
15 Assessment of Ability to do Work-Related Activities" form. (AR
16 198). Therein, Dr. Ezroj opined that Plaintiff can only lift/carry
17 up to 10 pounds, can only stand or walk for 30 minutes without
18 interruption, and can only stand/walk for two hours total in an
19 eight-hour workday. Dr. Ezroj commented that x-rays "revealing
20 Grade 2 spondylolisthesis and osteophytes throughout lumbar spine"
21 support these assessments. (Id.).

22
23 **3. Andrew Kahn, M.D.**

24
25 On January 31, 2013, Plaintiff visited Dr. Andrew Kahn, M.D.,
26 for a physical medicine and rehabilitation outpatient consultation.
27 Notes from this visit indicate that Plaintiff walked without an
28 assistive device and moved easily from sit to stand and with

1 transfers to the exam table. (AR 217). Physician notes indicate
2 that Plaintiff's lumbar spine was nontender to palpation, with
3 tenderness only noted in the paraspinal muscles at L5 to S1. (Id.).
4 Plaintiff's manual motor testing was normal, and her sensation was
5 intact to light touch throughout bilateral lower extremities.
6 (Id.). Plaintiff had normal range of spinal motion and no pain
7 with twisting of spine in extension. (Id.). Plaintiff had normal
8 range of motion of the hip, and a negative straight leg raising
9 test. (AR 218). Under "Plan," Dr. Kahn's notes state that
10 Plaintiff "was informed of the spectrum of treatment options, from
11 conservative monitoring, physical therapy/therapies, medications,
12 interventions/injections or surgical evaluation/treatment." (AR
13 218).

14
15 **C. Reviewing Physician, Dr. James Wellons, M.D.**

16
17 On November 15, 2013, State Agency reviewing physician, Dr.
18 James Wellons, M.D., reviewed Plaintiff's medical records and
19 provided a medical assessment. (AR 54-55). Dr. Wellons noted that
20 Plaintiff's "MDIs include: Spondylolisthesis of the LS" and stated
21 that these "MDI's cannot reasonably be expected to produce the
22 alleged pain and symptoms." (AR 55). He further noted that
23 "[t]here is no PE that describes abnormalities that support"
24 limiting Plaintiff to standing or walking two hours during the
25 workday and lifting or carrying no more than ten pounds. (Id.).
26 He elaborated that the "tx Orthopedist notes [these limitations]
27 and notes he does not endorse" them. (Id.). Dr. Wellons also
28 found that "XRs of both knees are normal except for mild

1 osteopenia.” (Id.). Ultimately, Dr. Wellons found that Plaintiff
2 did not have any severe physical impairment or medically
3 diagnosable knee condition and only had a non-severe spinal
4 impairment. (Id.).
5

6 **D. Vocational Expert Testimony**

7

8 Vocational Expert (“VE”) Susan Allison testified at
9 Plaintiff’s hearing before the ALJ. (AR 44-47). The ALJ asked
10 the VE to consider a series of factors in creating two hypotheticals
11 for determining Plaintiff’s ability to work. (AR 45-46). The
12 ALJ’s first hypothetical included an individual with certain
13 postural limitations who could perform light work, as defined in
14 the Dictionary of Occupational Titles². (AR 45). The VE testified
15 that an individual with the described hypothetical limitations
16 could perform Plaintiff’s previous work as a nanny as she performed
17 it, but not as the DOT describes it. (Id.).
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21 ² “*Light work*. Light work involves lifting no more than 20 pounds
22 at a time with frequent lifting or carrying of objects weighing up
23 to 10 pounds. Even though the weight lifted may be very little, a
24 job is in this category when it requires a good deal of walking or
25 standing, or when it involves sitting most of the time with some
26 pushing and pulling of arm or leg controls. To be considered capable
27 of performing a full or wide range of light work, you must have
28 the ability to do substantially all of these activities. If someone
can do light work, we determine that he or she can also do sedentary
work, unless there are additional limiting factors such as loss of
fine dexterity or inability to sit for long periods of time.”
20 C.F.R. § 404.1567 (b).

1 The ALJ's second hypothetical included all the limitations
2 described in the first hypothetical, however the individual could
3 only perform work at a sedentary level³ and had additional postural
4 restrictions. (Id.). The VE testified that an individual with
5 these hypothetical limitations could neither perform Plaintiff's
6 previous work as a nanny as she performed it nor as it is generally
7 performed in the national economy. (AR 45-46).

8
9 **E. Third Party Adult Function Report**

10
11 On October 27, 2013, Plaintiff's father, Robert Soyka,
12 completed a Third Party Adult Function Report on Plaintiff's
13 behalf. (AR 145-154). Plaintiff's father stated that he lives in
14 a mobile home with Plaintiff and that they talk, watch TV, and go
15 to dinner together. (AR 145). He noted that Plaintiff helps with
16 light chores (AR 146), can only lift fifteen lbs. (AR 147), goes
17 on short walks, drives a car, and goes out alone. (AR 149). He
18 also indicated that Plaintiff is able to pay bills, count change,
19 handle a savings account, and use a checkbook/money orders. (AR
20 15). Plaintiff's father stated that Plaintiff goes to the movies
21 and to concerts with friends and her mother. (AR 151). When
22 prompted to describe any changes in social activities since

23 _____
24 ³ "Sedentary work involves lifting no more than 10 pounds at a
25 time and occasionally lifting or carrying articles like docket
26 files, ledgers, and small tools. Although a sedentary job is
27 defined as one which involves sitting, a certain amount of walking
28 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).

1 Plaintiff's conditions began, Plaintiff's father noted that she
2 "[n]ever did go out much." (AR 151). He noted that Plaintiff's
3 injury affects her ability to lift, climb stairs, bend, stand,
4 kneel, walk, and sit. (AR 151). He elaborated that Plaintiff can
5 walk 50 yards before needing to stop and rest. (AR 152).

6
7 **F. Adult Function Report**

8
9 On October 30, 2013, Plaintiff completed an Adult Function
10 Report (AR 157-164), wherein she stated that she is in pain "24/7"
11 with her back (AR 157). She stated that she helps take care of
12 her mother, who is very ill. (AR 158). She noted that she has no
13 problems with personal care (Id.), prepares meals daily (AR 159),
14 and that she scrapbooks and plays guitar every once in a while (AR
15 161). She stated that once a month, if that, she may go out to
16 eat with others or go to their home to watch TV or to visit and
17 talk. (AR 161). She stated that she can pay attention for "a long
18 time" and that she has no problems getting along with family,
19 friends, neighbors, or others. (AR 162). She stated that she
20 drives and is able to pay bills, count change, handle a savings
21 account, and use a checkbook/money orders. (AR 160). She noted
22 that she can walk for thirty minutes before needing to stop and
23 rest, except that she pushes herself to walk longer when she goes
24 grocery shopping. (AR 162).

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IV.

THE FIVE STEP SEQUENTIAL EVALUATION PROCESS

To qualify for disability benefits, a claimant must demonstrate a medically determinable physical or mental impairment that prevents him from engaging in substantial gainful activity⁴ and that is expected to result in death or to last for a continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work he previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- (1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.

⁴ Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done for pay or profit. 20 C.F.R. §§ 404.1520, 416.910.

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(2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.

(3) Does the claimant's impairment meet or equal one on the list of specific impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is found disabled. If not, proceed to step four.

(4) Is the claimant capable of performing his past work? If so, the claimant is found not disabled. If not, proceed to step five.

(5) Is the claimant able to do any other work? If not, the claimant is found disabled. If so, the claimant is found not disabled.

Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett); 20 C.F.R. §§ 404.1520(b)-404.1520(f)(1) & 416.920(b)-416.920(f)(1).

The claimant has the burden of proof at steps one through four and the Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-54. If, at step four, the claimant meets his burden of establishing an inability to perform past work, the Commissioner must show that the claimant can perform some other

1 work that exists in "significant numbers" in the national economy,
2 taking into account the claimant's residual functional capacity
3 ("RFC"), age, education, and work experience. Tackett, 180 F.3d
4 at 1098, 1100; Reddick, 157 F.3d at 721; 20 C.F.R. §§
5 404.1520(f)(1), 416.920(f)(1). The Commissioner may do so by the
6 testimony of a vocational expert or by reference to the Medical-
7 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,
8 Appendix 2 (commonly known as "the grids"). Osenbrock v. Apfel,
9 240 F.3d 1157, 1162 (9th Cir. 2001) (citing Tackett). When a
10 claimant has both exertional (strength-related) and nonexertional
11 limitations, the Grids are inapplicable and the ALJ must take the
12 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864,
13 869 (9th Cir. 2000).

14
15 **V.**

16 **THE ALJ'S DECISION**

17
18 On November 12, 2014, after employing the five-step sequential
19 evaluation process, the ALJ issued a decision finding that
20 Plaintiff is not disabled within the meaning of the Social Security
21 Act. (AR 20). At step one, the ALJ observed that Plaintiff had
22 not engaged in substantial gainful activity since July 16, 2013,
23 the alleged disability onset date. (AR 14). At step two, the ALJ
24 found that Plaintiff's severe impairments were spondylolisthesis,
25 lumbosacral spondylosis, and lumbar strain. (Id.). At step three,
26 the ALJ found that Plaintiff did not have an impairment or
27 combination of impairments that meets or medically equals the
28

1 severity of one of the listed impairments in 20 CFR Part 404,
2 Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525 and
3 404.1526). (AR 15). The ALJ then found that Plaintiff had the
4 following RFC:

5
6 [C]laimant has the residual functional capacity to
7 perform light work as defined in 20 CFR 404.1567(b)
8 including lifting and/or carrying 20 pounds
9 occasionally, 10 pounds frequently, and sitting,
10 standing, and walking each for 6 hours in an[] 8-hour
11 workday. As for exceptions, the claimant can only
12 occasionally bend, stoop, kneel, crouch, crawl, and climb
13 ramps, stairs, ladders, ropes, and/or scaffolds.

14
15 (AR 15-16).

16
17 At step four, the ALJ determined that Plaintiff is "capable
18 of performing past relevant work as a nanny. This work does not
19 require the performance of work-related activities precluded by
20 the [plaintiff's] residual functional capacity." (AR 19).

21
22 **VI.**

23 **STANDARD OF REVIEW**

24
25 Under 42 U.S.C. § 405(g), a district court may review the
26 Commissioner's decision to deny benefits. "The court may set aside
27 the Commissioner's decision when the ALJ's findings are based on
28 legal error or are not supported by substantial evidence in the

1 record as a whole.” Auckland v. Massanari, 257 F.3d 1033, 1035
2 (9th Cir. 2001) (citing Tackett, 180 F. 3d at 1097); Smolen v.
3 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v. Bowen,
4 885 F.2d 597, 601 (9th Cir. 1989)).

5
6 “Substantial evidence is more than a scintilla, but less than
7 a preponderance.” Reddick, 157 F.3d at 720 (citing Jamerson v.
8 Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is “relevant
9 evidence which a reasonable person might accept as adequate to
10 support a conclusion.” Id. (citing Jamerson, 112 F.3d at 1066;
11 Smolen, 80 F.3d at 1279). To determine whether substantial evidence
12 supports a finding, the court must “consider the record as a
13 whole, weighing both evidence that supports and evidence that
14 detracts from the [Commissioner’s] conclusion.” Auckland, 257
15 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir.
16 1993)). If the evidence can reasonably support either affirming
17 or reversing that conclusion, the court may not substitute its
18 judgment for that of the Commissioner. Reddick, 157 F.3d at 720-21
19 (citing Flaten v. Sec’y of Health & Human Servs., 44 F.3d 1453,
20 1457 (9th Cir. 1995)).

21
22 **VII.**

23 **DISCUSSION**

24
25 Plaintiff challenges the ALJ’s decision on two grounds.
26 First, Plaintiff contends that the ALJ committed legal error in
27 not adequately assessing her testimony regarding her pain and
28 limitations. (Pl. MSO at 2). Second, Plaintiff contends that the

1 ALJ failed to properly consider the opinions of Plaintiff's
2 treating physician, Dr. Alberto Ezroj. (Id. at 8).

3
4 The Court disagrees. The record demonstrates that the ALJ
5 conducted a thorough and proper analysis of Plaintiff's testimony
6 and gave proper weight to Dr. Ezroj's opinions. Accordingly, for
7 the reasons discussed below, the Court finds that the ALJ's
8 decision must be AFFIRMED.

9
10 **A. The ALJ Provided Specific, Clear, And Convincing Reasons To**
11 **Reject Plaintiff's Testimony**

12
13 Plaintiff argues that the ALJ committed legal error in not
14 adequately assessing Plaintiff's testimony regarding her pain and
15 limitations. (Pl. MSO at 2). Specifically, Plaintiff contends
16 that the ALJ failed to provide clear and convincing reasons for
17 rejecting Plaintiff's allegations. (Id. at 3). The Court
18 disagrees and finds that the ALJ properly rejected Plaintiff's
19 testimony.

20
21 When assessing a claimant's credibility regarding subjective
22 pain or intensity of symptoms, the ALJ must engage in a two-step
23 analysis. Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012).
24 Initially, the ALJ must determine if there is medical evidence of
25 an impairment that could reasonably produce the symptoms alleged.
26 Id. (citation omitted). If such evidence exists, and there is no
27 evidence of malingering, the ALJ must provide specific, clear and
28 convincing reasons for rejecting the claimant's testimony about

1 the symptom severity. Id. (citation omitted). In so doing, the
2 ALJ may consider the following:

3
4 [One,] [the] ordinary techniques of credibility
5 evaluation, such as the claimant's reputation for lying,
6 prior inconsistent statements concerning the symptoms,
7 and other testimony by the claimant that appears less
8 than candid; [two,] [the] unexplained or inadequately
9 explained failure to seek treatment or to follow a
10 prescribed course of treatment; and [three,] the
11 claimant's daily activities.

12
13 Smolen, 80 F.3d at 1284 (brackets added); Tommasetti v. Astrue,
14 533 F.3d 1035, 1039 (9th Cir. 2008).

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 [plaintiff's]
19 testimony." Tommasetti, 533 F.3d at 1039 (citation omitted).
20 Although an ALJ's interpretation of a claimant's testimony may not
21 be the only reasonable one, if it is supported by substantial
22 evidence, "it is not [the court's] role to second-guess it."
23 Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (citing
24 Fair, 885 F.2d at 604).

25
26 The ALJ considered evidence in most of the categories
27 enumerated above when determining that Plaintiff's symptoms are
28 not as severe as alleged. First, objective evidence contradicted

1 allegations in Plaintiff's Disability Report and her testimony,
2 making these allegations appear less than candid and thereby
3 undermining her credibility. For example, x-rays of Plaintiff's
4 knees were normal, suggesting that she has no significant knee
5 problems, despite Plaintiff listing "knees" in her Disability
6 Report. (AR 17, 132). Moreover, there is no objective evidence
7 of peripheral neuropathy in her feet (AR 17), despite Plaintiff's
8 testimony that her feet are in pain 24/7. (AR 35). Plaintiff
9 contends that while the ALJ is correct in her assertions that there
10 is no evidence of peripheral neuropathy, significant knee problems,
11 ulcerative colitis or a learning disability, Plaintiff did not
12 testify that these conditions rendered her disabled and that,
13 "[s]ince they were not a basis of her testimony, the citations are
14 irrelevant." (Pl. MSO at 3). However, it is appropriate for the
15 ALJ to consider objective medical evidence that contradicts
16 Plaintiff's alleged symptoms in finding her less than fully
17 credible, whether or not she testified to total disability from
18 these symptoms.

19
20 The ALJ did note that an MRI taken on September 23, 2013
21 supports Plaintiff's back allegations and acknowledged Plaintiff's
22 diagnosis of spondylolisthesis, lumbosacral spondylosis, and
23 lumbar strain. (AR 17). However, the ALJ noted that other than
24 physical therapy and medication, doctors have prescribed a
25 conservative treatment path for these conditions, indicating that
26 Plaintiff's condition is not as severe as alleged. (Id.).
27 Specifically, the ALJ noted, there have been no surgery referrals,
28 no recent recommendations for epidural injections, or any other

1 significant medical interventions. (Id.). Moreover, the ALJ
2 considered evidence that Plaintiff has normal range of motion in
3 her back, without spasms or exacerbation of pain, and normal
4 strength in her extremities. (AR 17, 514).

5
6 Additionally, the ALJ noted that no specialists have treated
7 Plaintiff for her alleged conditions and, rather, only her family
8 primary care physicians have administered treatment. (AR 17).
9 Plaintiff argues that her physicians did not offer or recommend
10 additional treatment options and that “[s]ince no additional
11 treatment was offered or suggested, [her] testimony should not be
12 discounted for failure to obtain additional treatment.” (Pl. MSO
13 at 4). However, an ALJ “is permitted to consider lack of treatment
14 in his credibility determination.” Burch v. Barnhart, 400 F.3d
15 676, 681 (9th Cir. 2005).

16
17 Moreover, as the ALJ also observed, Plaintiff’s activities of
18 daily living suggest that her conditions are not as severe as
19 alleged. (AR 17). The evidence reflects that Plaintiff is capable
20 of handling personal care, preparing meals, washing dishes, doing
21 laundry, dusting, driving, shopping, handling finances, and playing
22 guitar. (Id.). These activities, the ALJ noted, indicate that
23 Plaintiff is able to complete light household chores, which are
24 “skills that are substantially similar to many working tasks.”
25 (Id.). Plaintiff argues that, when describing her daily
26 activities, the ALJ mistakenly cites only to a form that
27 Plaintiff’s father completed. (Pl. MSO at 6). However, the ALJ
28 specifically noted that Plaintiff’s father, who lives with

1 Plaintiff (AR 145), "alleged substantially [] the same limitations
2 as the claimant ... However, he provided more detail." (AR 16).
3 Moreover, Plaintiff admitted in her own Adult Function Report to
4 performing several of these activities, including laundry, driving,
5 and washing dishes. (AR 43) Plaintiff also acknowledged that she
6 handles her own finances, as well as shops and plays guitar. (AR
7 157-164).

8
9 Plaintiff next argues that the "ALJ fails to show how these
10 sporadic activities are consistent with light work." (Pl. MSO at
11 7). However, an ALJ may rely on a claimant's activities of daily
12 living in assessing credibility not only if the activities are
13 directly applicable to work, but also when they are inconsistent
14 with the claimant's subjective allegations of disability. See
15 Molina, 674 F.3d at 1112-13 ("While a claimant need not "vegetate
16 in a dark room" in order to be eligible for benefits, the ALJ may
17 discredit a claimant's testimony when the claimant reports
18 participation in everyday activities indicating capacities that
19 are transferable to a work setting. Even where those activities
20 suggest some difficulty functioning, they may be grounds for
21 discrediting the claimant's testimony to the extent that they
22 contradict claims of a totally debilitating impairment.");
23 Valentine v. Astrue, 574 F.3d 685, 693 (9th Cir. 2009) (affirming
24 ALJ's finding that claimant's "non-work activities . . . are
25 inconsistent with the degree of impairment he alleges."). The ALJ
26 appropriately determined that Plaintiff's activities of daily
27 living indicate that her conditions are not as severe as alleged,
28 thereby undermining her credibility.

1 The ALJ also noted that one of Plaintiff's primary care
2 physicians, Dr. Song, commented in March of 2013 that Plaintiff
3 could return to work as a nanny. (AR 18). Plaintiff argues that
4 this is not relevant because Plaintiff is not alleging disability
5 until July 16, 2013. (Pl. MSO at 5). However the ALJ specifically
6 stated that the "medical evidence does not reflect a significant
7 deterioration in the [plaintiff's] lifting and carrying or sitting
8 and standing abilities between March 2013 and July 2013." (AR 18).

9
10 In sum, there are legally sufficient reasons for the ALJ to
11 have declined to credit Plaintiff's subjective statements in their
12 entirety. For these reasons, the ALJ's ultimate determination that
13 Plaintiff's testimony was not credible is valid.

14
15 **B. The ALJ Provided Specific And Legitimate Reasons To Reject**
16 **Dr. Ezroj's Opinion**

17
18 Plaintiff next contends that the ALJ failed to properly
19 consider the opinions of Plaintiff's treating physician, Dr. Ezroj.
20 (Pl. MSO at 8). The Court disagrees and finds that the ALJ provided
21 specific and legitimate reasons for rejecting Dr. Ezroj's opinions.

22
23 Social Security regulations require the ALJ to consider all
24 relevant medical evidence when determining whether a claimant is
25 disabled. 20 C.F.R. §§ 404.1520(e), 404.1527(c), 416.927(c).
26 Where the Agency finds that the treating physician's opinion about
27 the nature and severity of the claimant's impairments is well-
28 supported by accepted medical techniques and is not inconsistent

1 with the other substantive evidence in the record, that opinion is
2 ordinarily controlling. 20 C.F.R. § 404.1527(c)(2); Orn v.
3 Astrue, 495 F.3d 625, 631 (9th Cir. 2007).

4
5 Nevertheless, the ALJ is also “responsible for determining
6 credibility, resolving conflicts in medical testimony, and for
7 resolving ambiguities.” Andrews v. Shalala, 53 F.3d 1035, 1039
8 (9th Cir. 1995); see also Tommasetti, 533 F.3d at 1041 (“[T]he ALJ
9 is the final arbiter with respect to resolving ambiguities in the
10 medical evidence.”). Findings of fact that are supported by
11 substantial evidence are conclusive. 42 U.S.C. § 405(g); see also
12 Key v. Heckler, 754 F.2d 1545, 1549 (9th Cir. 1985) (“Where the
13 evidence as a whole can support either a grant or a denial, [the
14 court] may not substitute [its] judgment for the ALJ’s.”); Ryan v.
15 Comm’r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (“‘Where
16 evidence is susceptible to more than one rational interpretation,’
17 the ALJ’s decision should be upheld.”) (quoting Burch, 400 F.3d at
18 679). An ALJ need not address every piece of evidence in the
19 record, but only evidence that is significant or probative. See
20 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir.
21 2006).

22
23 Furthermore, “[t]he treating physician’s opinion is not,
24 however, necessarily conclusive as to either a physical condition
25 or the ultimate issue of disability.” Magallanes v. Bowen, 881
26 F.2d 747, 751 (9th Cir. 1989). The weight given a treating
27 physician’s opinion depends on whether it is supported by
28 sufficient medical data and whether it is consistent with other

1 evidence in the record. See 20 C.F.R. § 404.1527. "The ALJ may
2 disregard the treating physician's opinion whether or not that
3 opinion is contradicted." Andrews, 53 F.3d at 1041 (citing
4 Magallanes, 881 F.2d at 751). To reject the uncontroverted opinion
5 of Plaintiff's physician, the ALJ must present clear and convincing
6 reasons for doing so. Andrews, 53 F.3d at 1041. Where, as here,
7 the treating physician's opinion is contradicted by other doctors,
8 the Commissioner may reject the opinion by providing "specific and
9 legitimate reasons" for doing so that are supported by substantial
10 evidence in the record. Rollins, 261 F.3d at 856 (citing Reddick,
11 157 F.3d at 725).

12
13 Here, the ALJ cited several specific and legitimate reasons
14 supported by the record for giving minimal weight to Dr. Ezroj's
15 opinions. First, the ALJ noted that Dr. Ezroj's opinion does not
16 provide for any postural movement limitations despite Plaintiff's
17 severe spinal impairment. (AR 18). The ALJ indicated that such
18 limitations would be to accommodate pressure and rapid movement on
19 the spine. (AR 18). Thus, it was inconsistent to find that
20 Plaintiff was severely limited with regards to standing and walking
21 but not to provide restrictions on activities such as bending and
22 stooping.

23
24 Second, the ALJ found that Dr. Ezroj's opinion was
25 inconsistent with objective medical evidence, stating that
26 "[n]othing in the MRI ... or other notes in the record support or
27 suggest why such extreme sitting and standing limitations are
28 necessary." (AR 18). The ALJ was referring to a September 19,

1 2013 MRI of Plaintiff's lumbar spine which showed Grade 1
2 spondylolisthesis (AR 18, 207), rather than Grade 2, as reported
3 by Dr. Ezroj (AR 198). An ALJ is free to disregard conclusory
4 opinions that lack support in the record. See, e.g., Batson v.
5 Comm'r of Soc. Sec., 359 F.3d 1190, 1195 (9th Cir. 2004) (ALJ may
6 discredit treating physicians' opinions that are conclusory, brief,
7 and unsupported by the record as a whole, or by objective medical
8 findings); Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996) (ALJ
9 properly rejected doctor's opinion because opinion consisted of
10 conclusory and unexplained check-off reports). The fact that no
11 objective medical evidence supported Dr. Ezroj's findings supports
12 the ALJ's determination.

13
14 The ALJ also noted that nothing in the treatment notes or
15 physical therapy notes supported such extreme limitations. (AR
16 18). The fact that Dr. Ezroj's conclusion conflicted with his own
17 treatment notes provides another valid basis upon which to reject
18 his opinions. See Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir.
19 2003) (holding that the ALJ properly rejected a treating
20 physician's testimony in favor of an examining physician's
21 statements because the treating physician's "extensive conclusions
22 regarding [claimant's] limitations [were] not supported by his own
23 treatment notes"); see generally 20 C.F.R. § 404.1527(c)(2),
24 (d)(2); see also Tommasetti, 533 F.3d at 1041 (finding that ALJ
25 properly discredited doctor's opinion where doctor's responses to
26 questionnaire were inconsistent with doctor's own medical records).
27 Dr. Ezroj's treatment notes from August 6, 2013 state that
28 Plaintiff had a normal range of motion in her back without spasm

1 or exacerbation of pain, normal strength in her extremities, and
2 did not exhibit any musculoskeletal tenderness. (AR 514).
3 Plaintiff's primary diagnosis at that time was "strain of back."
4 (Id.).

5
6 Plaintiff also argues that the ALJ's rejection of State Agency
7 physician Dr. Wellons' opinion demonstrates that "the ALJ failed
8 to properly reject the opinion of Dr. Ezroj because the ALJ is
9 relying on no medical opinion or evidence to the contrary, and she
10 is improperly interpreting the medical evidence as it concerns
11 [Plaintiff's] spine impairment." (Pl. MSO at 10). The ALJ found
12 that, while Dr. Wellons' opinion that Plaintiff did not have a
13 medically diagnosable knee condition was accurate, his conclusions
14 that there was only a non-severe spinal impairment was inconsistent
15 with the spinal MRI, treatment notes, and physical therapy
16 demonstrating a severe impairment. (AR 18). Additionally, the
17 ALJ found that, although Dr. Wellons did not recommend any postural
18 or exertional limitations, evidence suggested that Plaintiff
19 required such limitations to reduce mobility requirements and
20 spinal pressure. (Id.). However, the ALJ's decision was
21 consistent with the totality of the evidence and any error in
22 affording minimal weight to Dr. Wellons' opinion was harmless as
23 it benefited Plaintiff.

24
25 The Court therefore disagrees with Plaintiff's contention that
26 the ALJ improperly rejected Dr. Ezroj's opinions and finds that
27 the ALJ provided specific and legitimate reasons for doing so.
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VIII.
CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner. The Clerk of the Court shall serve copies of this Order and the Judgment on counsel for both parties.

DATED: May 23, 2017

_____/s/_____
SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

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