

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TANYA LOUISE ST. JOHN,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. 1:15-cv-01434-BAM

**ORDER AFFIRMING AGENCY’S DENIAL
OF BENEFITS AND ORDERING
JUDGMENT FOR COMMISSIONER**

I. INTRODUCTION

Plaintiff Tanya St. John (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying her application for supplemental security income benefits pursuant to Title XVI of the Social Security Act. The matter is before the Court on the parties’ briefs, which were submitted without oral argument to Magistrate Judge Barbara A. McAuliffe. Having carefully considered the parties’ briefs, as well as the entire record in this case, the Court finds the decision of the Administrative Law Judge (“ALJ”) to be supported by substantial evidence in the record and based upon proper legal standards. Accordingly, the Court affirms the Commissioner’s determination.

1 **II. BACKGROUND**

2 **A. Overview of Administrative Proceedings**

3 On July 18, 2007, Plaintiff filed an application for Supplemental Security Income benefits,
4 alleging disability beginning June 1, 1999. AR 33.¹ Two prior administrative decisions were vacated
5 by the Appeals Council on October 21, 2009 and June 10, 2013. AR 143-183. On remand from the
6 Appeals Council, Administrative Law Judge (“ALJ”) John Cusker held a hearing. AR 47. In a
7 decision dated February 24, 2014, the ALJ found that Plaintiff was not disabled because, despite
8 some impairment, Plaintiff retained the residual functional capacity (RFC) to perform sedentary
9 work with no public contact. AR 37. The ALJ’s decision became the final decision of the
10 Commissioner of Social Security when the Appeals Council denied Plaintiff’s request for review.
11 This appeal followed.

12 **B. Plaintiff’s Background and Recent Hearing Testimony**

13 The ALJ held a hearing on December 11, 2013, in Fresno, California. AR 55-97. Plaintiff,
14 who was represented by counsel, appeared and testified. *Id.* Impartial Vocational Expert Jose
15 Chaparro also testified at the hearing. AR 53-58.

16 Plaintiff who was forty years old at the time of the hearing lives in Merced, California. AR
17 60. She has a high school equivalency (GED) education. Plaintiff lives with her son-in-law, her
18 twenty-two year old daughter, and her nineteen year old son. AR 62-63.

19 In regards to her alleged disability, Plaintiff testified that she suffers from persistent knee
20 pain and mental impairments including bi-polar disorder and depression. She has worn a cast on her
21 leg for six or seven years and used a walker for five or six years. AR 61-62. She takes morphine,
22 Norco, Vicodin, and acetaminophen as medications. AR 64-65. She testified that pain medications
23 “somewhat” helped, that she felt groggy and got dry mouth as side effects from the pain
24 medications, and she experienced stomach problems as a side effect from her psychotropic
25 medication. AR 67. Plaintiff stated that she had surgery on her knee in 2006 or 2007, and had been
26
27

28 ¹ References to the Administrative Record cite to “AR,” followed by the corresponding page number to the Administrative Record.

1 recently referred to a physical therapist. AR 67-68. At the time of the hearing, Plaintiff had not
2 performed full time work for over twenty-one years. AR 69.

3 During the hearing, the ALJ noted that the record did not demonstrate consistent treatment
4 for Plaintiff's left knee impairment. AR 70. The ALJ asked Plaintiff's counsel to question Plaintiff
5 about her knee related symptoms. In questioning from her attorney, Plaintiff testified that she
6 currently sees a pain therapist for her knee pain but that further knee surgery was not recommended
7 at this time. AR 71. She currently takes medication for her knee and back pain and she rates her left
8 knee pain at a six on a scale of one to ten. AR 71. She stated that she elevated her leg whenever
9 seated, that she needed to lie down part of the day, and that her daughter helped her bathe, do
10 housework, perform shopping, and made sure she took her medications. AR 72-74, 77, 80.

11 When asked about her mental impairments, Plaintiff testified that she has been receiving
12 mental health treatment since 2007. AR 75. Despite taking medication, she still hears voices, has
13 trouble sleeping, and she experiences panic attacks, headaches, and nausea. AR 76, 84, 87. Plaintiff
14 cries daily as a result of her depression. AR 79.

15 Thereafter, the ALJ asked VE Chaparro hypothetical questions based upon the medical
16 record and the ALJ's subsequent RFC finding. AR 89-96. After asking the VE to contemplate an
17 individual of the same age, RFC, education, and work background as Plaintiff, the VE determined
18 that Plaintiff could perform work as it exists in the national economy. AR 91-94.²

19 **C. Medical Record**

20 The entire medical record was reviewed by the Court. AR 464-991. The Court will
21 reference the medical evidence to the extent it is necessary to the Court's decision.

22 **D. The ALJ's Decision**

23 Using the Social Security Administration's five-step sequential evaluation process, the ALJ
24 determined that Plaintiff did not meet the disability standard. AR 33-47. More particularly, the ALJ
25 found that Plaintiff had not engaged in any substantial gainful activity since July 18, 2007. AR 35.
26 Further, the ALJ identified a history of medial meniscus tear, status post-surgery in April 2008,
27 osteoarthritis of the left knee; degenerative disc disease of the lumbar spine, obesity, bipolar

28 ² Plaintiff does not challenge the sufficiency of the hypothetical questions posed to the vocational expert.

1 disorder, posttraumatic stress disorder, and a history of drug abuse, apparently in remission since
2 2008 as severe impairments. AR 35. Nonetheless, the ALJ determined that the severity of the
3 Plaintiff's impairments did not meet or exceed any of the listed impairments. AR 36.

4 Based on his review of the entire record, the ALJ determined that Plaintiff retained the
5 residual functional capacity ("RFC") to lift and carry ten pounds occasionally and five pounds
6 frequently, was able to stand and/or walk off and on up to four hours in an eight hour workday,
7 could squat and walk on grades occasionally, and perform simple, repetitive tasks with no public
8 contact. AR 36-37. The ALJ determined that, based on Plaintiff's age, education, work experience,
9 and RFC, significant jobs exist in the national economy that Plaintiff could perform. AR 46-47. The
10 ALJ therefore found that Plaintiff was not disabled under the Social Security Act. AR 47.

11 **SCOPE OF REVIEW**

12 Congress has provided a limited scope of judicial review of the Commissioner's decision to
13 deny benefits under the Act. In reviewing findings of fact with respect to such determinations, this
14 Court must determine whether the decision of the Commissioner is supported by substantial
15 evidence. 42 U.S.C. § 405 (g). Substantial evidence means "more than a mere scintilla,"
16 *Richardson v. Perales*, 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v.*
17 *Weinberger*, 514 F.2d 1112, 1119, n. 10 (9th Cir. 1975). It is "such relevant evidence as a
18 reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S.
19 389, 401 (1971). The record as a whole must be considered, weighing both the evidence that
20 supports and the evidence that detracts from the Commission's conclusion. *Jones v. Heckler*, 760
21 F.2d 993, 995 (9th Cir. 1985). In weighing the evidence and making findings, the Commission must
22 apply the proper legal standards. *E.g., Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988).
23 This Court must uphold the Commissioner's determination that the claimant is not disabled if the
24 Secretary applied the proper legal standards, and if the Commission's findings are supported by
25 substantial evidence. *See Sanchez v. Sec'y of Health and Human Serv.*, 812 F.2d 509, 510 (9th Cir.
26 1987).

27 ///

28 ///

DISABILITY STANDARD

1
2 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in
3 substantial gainful activity due to a medically determinable physical or mental impairment which has
4 lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §
5 1382c (a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such
6 severity that he or she is not only unable to do his or her previous work, but cannot, considering his
7 or her age, education, and work experience, engage in any other kind of substantial gainful work
8 which exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir.
9 1989). The burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275
10 (9th Cir. 1990).

III. DISCUSSION

11
12 Plaintiff challenges the ALJ's evaluation of the medical evidence. Specifically: (1) the
13 ALJ's reliance on an outdated examining opinion; (2) the ALJ's treatment of the treating evidence;
14 and (3) whether the ALJ gave specific and legitimate reasons for rejecting Plaintiff's examining
15 psychiatrist's opinion.

A. Legal Standard

16
17 Cases in this circuit distinguish among the opinions of three types of physicians: (1) those
18 who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant
19 (examining physicians); and (3) those who neither examine nor treat the claimant (non-examining
20 physicians). *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). As a general rule, more weight
21 should be given to the opinion of a treating source than to the opinion of doctors who do not treat the
22 claimant. *Id.* (citing *Winans v. Bowen*, F.2d 643, 647 (9th Cir. 1987)). At least where the treating
23 doctor's opinion is not contradicted by another doctor, it may be rejected only for "clear and
24 convincing" reasons. *Id.* (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Even if
25 the treating doctor's opinion is contradicted by another doctor, the Commissioner may not reject this
26 opinion without providing "specific and legitimate" reasons supported by substantial evidence in the
27 record for doing so. *Id.* (citing *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

28 Notwithstanding the above discussion, an ALJ is not required to accept an opinion of a

1 treating physician, or any other medical source, if it is conclusory and not supported by clinical
2 findings. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992). Additionally, an ALJ is not
3 bound to a medical source's opinion concerning a claimant's limitations on the ultimate issue of
4 disability. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). If the record as a whole does
5 not support the medical source's opinion, the ALJ may reject that opinion. *Batson v. Comm'r of*
6 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004). Items in the record that may not support the
7 physician's opinion include clinical findings from examinations, conflicting medical opinions,
8 conflicting physician's treatment notes, and the claimant's daily activities. *Id.*; *Bayliss v. Barnhart*,
9 427 F.3d 1211 (9th Cir. 2005); *Connett v. Barnhart*, 340 F.3d 871 (9th Cir. 2003); *Morgan v.*
10 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595 (9th Cir.1999).

11 **1. Dr. Martin's Examining Opinion**

12 On October 5, 2007, James Martin, M.D., examined Plaintiff at the request of the agency.
13 AR 464-466. Dr. Martin noted degenerative changes at both knees with crepitus, two small
14 effusions, Plaintiff's gait was oddly antalgic, and heel to toe walking was not attempted. AR 466. Dr.
15 Martin diagnosed Plaintiff with chronic knee pain, other musculoskeletal issues, obesity, and
16 deconditioned state. AR 466. Due to her impairments, Dr. Martin opined that Plaintiff could only
17 lift ten pounds or less at a time and frequently lift up to five pounds and she would likely be able to
18 stand and walk off and on for fours in an eight hour workday with appropriate breaks. AR 466.

19 In weighing Dr. Martin's opinion, the ALJ found as follows:

20 The physical limitations set forth above are consistent with the opinion of James
21 Martin, M.D. who performed an internal medicine consultative examination of the
22 claimant in October 2007. The claimant reported having left knee pain since
23 undergoing surgery at age 21. She also reported pain in her neck with muscle
24 spasms. The claimant used a non-prescribed untraditional wooden cane. She had no
25 trouble getting on or off the exam table. Dr. Martin described her gait as "oddly
26 antalgic." The claimant's cooperation was "unclear" during muscoskeletal testing
27 with grimacing and pain vocalization. The claimant's cervical and lumbar spine had
28 normal range of motion, but the right shoulder had limited range. She had no
peripheral edema, clubbing, ulcerations, or skin changes. The doctor noted changes
at both knees with crepitus and small effusions. Sensation was intact, and grip
strength was 5/5. Dr. Martin diagnosed chronic knee pain and other muscoskeletal
issues, and obesity/deconditioned state. He opined that the claimant was able to lift
ten pounds occasionally and five pounds frequently, and stand and walk for four
hours out of eight. Restrictions involving squatting, walking on grades, and similar

1 activities seemed appropriate (but were not described in detail). She had the ability to
2 fully manipulate objects. Dr. Martin further opined that the claimant might have
difficulty maintaining employment, based on her subjective complaints.

3 I give great with to this opinion because Dr. Martin's clinical findings support his
4 opinion. However, I note that this this examination preceded knee surgery, and other
evidence suggests that surgery should have improved the claimant's condition.

5 However, I give no weight to Dr. Martin's opinion that the claimant might have
6 difficulty maintaining employment. As noted above other findings and medical
7 opinions cast doubt on the credibility of the claimant's subjective complaints. Indeed,
Dr. Martin noted that the claimant's reliability seemed unclear.

8 AR 38.

9 **A. The ALJ Correctly Weighed the Examining Physician Evidence**

10 In her first argument, Plaintiff objects to the ALJ's reliance on the early examining opinion
11 of Dr. Martin. According to Plaintiff, Dr. Martin's opinion pre-dates many of her later diagnosed
12 symptoms. (Doc. 17-1 at 11-16). Plaintiff explains that at the time of her examination by Dr.
13 Martin, her diagnostic imaging was negative. However, subsequent objective testing showed that
14 her condition worsened over the additional seven year period at issue. Plaintiff states that after
15 October 2007, she had knee surgery, and her later imaging revealed positive findings of knee, neck
16 and lumbar spine impairments.

17 Plaintiff does not challenge the ALJ's evaluation of Dr. Martin's opinion; rather Plaintiff
18 argues that this outdated opinion is not sufficient evidence in which the ALJ can rely. The Court
19 disagrees. Contrary to Plaintiff's assertion, the ALJ properly gave "great weight" to Dr. Martin's
20 opinion but also properly considered additional medical evidence submitted subsequent to Dr.
21 Martin's opinion.

22 In his analysis, the ALJ summarized accurately the objective findings of Dr. Martin. AR 38.
23 The ALJ acknowledged that Dr. Martin's report occurred early in the Plaintiff's disability process,
24 and specifically, prior to Plaintiff's subsequent knee surgery. AR 38. However, the ALJ noted that
25 Plaintiff's knee surgery, occurring after Dr. Martin's opinion, was likely to improve Plaintiff's
26 condition. AR 38. There is nothing to suggest that the ALJ should have ignored Dr. Martin's
27 opinion simply because Plaintiff continued to receive treatment long after Dr. Martin issued his
28 opinion. The ALJ evaluated Dr. Martin's opinion in addition to the medical records developed

1 subsequent to Dr. Martin's examination. AR 38-46.

2 To the extent that Plaintiff argues that the ALJ had a duty to order an additional consultative
3 examination to include a consideration of her more recent medical treatment, nothing in the record
4 indicates that the ALJ had a duty to further develop this evidence. An ALJ has a duty to 'fully and
5 fairly develop the record and to assure that the claimant's interests are considered.' *Tonapetyan v.*
6 *Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). This duty is triggered when there is "[a]mbiguous
7 evidence" or on "the ALJ's own finding that the record is inadequate to allow for proper evaluation
8 of the evidence." *Id.* However, an ALJ "does not have to exhaust every possible line of inquiry in
9 an attempt to pursue every potential line of questioning." *Hawkins v. Chater*, 113 F.3d 1162, 1168
10 (10th Cir. 1997) ("The standard is one of reasonable good judgment"). Indeed, an ALJ is only
11 required to conduct further inquiries with a treating or consulting physician "if the medical records
12 presented to him do not give sufficient medical evidence to determine whether the claimant is
13 disabled." *Johnson v. Astrue*, 627 F.3d 316, 319-20 (8th Cir. 2010).

14 The ALJ did not have a duty to develop the record based on the timing of Dr. Martin's 2007
15 opinion. While Plaintiff alleges that there is a seven year gap between Dr. Martin's opinion and the
16 2014 opinion of the ALJ, Dr. Martin's evaluation occurred shortly before much of the other medical
17 evidence in the record. Indeed, the ALJ discussed the March 2008 medical findings of Steven
18 Berrian, M.D, occurring merely five months after Dr. Martin's examination. AR 38. Dr. Berrian
19 referred Plaintiff for arthroscopic left knee surgery which occurred on April 11, 2008. AR 38, 781.
20 The ALJ also weighed the opinion of Plaintiff's treating physician Dr. Crews, who completed a
21 medical source statement in October 2008, only a year after Dr. Martin's examination. AR 39. The
22 timing of Dr. Martin's opinion was therefore not far removed from the timing of the other relevant
23 medical evidence.

24 Further, on the issue of disability there was ample medical evidence in the record to fully and
25 completely assess Plaintiff's medical treatment subsequent to Dr. Martin's evaluation. In
26 determining the ultimate issue of disability, Dr. Martin's 2007 opinion was one of many pieces of
27 evidence relied on by the ALJ. Indeed, the administrative record in this case is comprised of over
28 500 pages and thoroughly traces Plaintiff's medical history since her first application for benefits.

1 Contrary to Plaintiff's assertion, the ALJ's decision and analysis reflects that the ALJ's RFC
2 assessment was not exclusively based on Dr. Martin's assessment; the ALJ thoroughly discussed the
3 full medical record and medical evidence relating to the period after Dr. Martin's report. Thus, even
4 though Dr. Martin did not have the opportunity to review evidence that post-dated his examination,
5 the ALJ did not err in considering Dr. Martin's report as part of the record. *Castaneda v. Astrue*, 344
6 Fed.Appx. 396, 398 (9th Cir. 2009) (unpublished) (even if the consultative examiner did not review
7 certain medical evidence, his assessment rested on his own independent examination of [claimant
8 and was consistent with the record as a whole). And, as explained further below, there were
9 adequate reasons to discredit the other treating evidence, even without considering the ALJ's
10 assessment of Dr. Martin's opinion. Thus, the ALJ did not err in weighing Dr. Martin's examining
11 opinion.

12 **2. Plaintiff's Treating Physicians – Dr. Crews and Dr. Leong**

13 In her second issue, Plaintiff argues that the ALJ failed to articulate adequate specific and
14 legitimate reasons for rejecting the opinions of her treating physicians Drs. Leong and Crews.

15 **A. Dr. Crews' Treating Opinion**

16 Plaintiff treated with Amanda Crews, M.D. monthly from May 2007 through March 2008.
17 AR 732-733, 742. On February 4, 2008, Plaintiff underwent a left knee MRI. AR 742. The MRI
18 showed a meniscus tear and related effusion, i.e water on the knee. On October 2, 2008, Dr. Crews
19 completed a medical source statement. AR 774-779. Dr. Crews limited Plaintiff to sitting no more
20 than two hours at one time, standing for five minutes at one time. AR 776. She stated that Plaintiff
21 could stand/walk for less than two hours and sit for six hours total in an eight hour workday. AR
22 776. She would sometimes need to take unscheduled breaks at least four times a day for fifteen
23 minutes before returning to work and would need to sit during these breaks. AR 777. She needed to
24 elevate her legs above the heart with prolonged sitting. With a sedentary job, her legs would need to
25 be elevated 100 percent of the time. While engaging in occasional standing/walking, she needed to
26 use a cane or other assistive device. She could never lift or carry ten pounds or greater and never
27 twist, stoop, bend, crouch, climb ladders, and stairs. Dr. Crews also diagnosed depression and
28 bipolar disorder. AR 775.

1 In weighing Dr. Crews' opinion, the ALJ found as follows:

2 Dr. Crews' opinion that the claimant could sit for at least 6 hours without a sit/stand
3 option is consistent with the residual functional capacity adopted above and is
4 accorded some weight. I give no weight to Dr. Crews' opinion that the claimant must
5 elevate her legs above her heart 100% of the time when doing sedentary work.
6 Swelling was noted only at the end of the day, not throughout the day. And, I do not
7 accept other exertional and postural limitations assessed by Dr. Crews, as the
8 treatment notes and objective evidence do not support inability to stand more than 5
9 minutes, walk more than one block, or lift any weight more than rarely.

10 AR 39.

11 **B. Dr. Leong's Treating Opinion**

12 Dr. Leong began treating Plaintiff monthly for chronic low back pain and knee pain in 2009.
13 AR 927-929, 941, 943, 965-973, 1012-1025. On January 27, 2010, Plaintiff underwent a lumbar
14 spine MRI. AR 932- 933. The MRI showed L4-5 and L5-S1 degenerative disc disease with disc
15 desiccation. At L4-5, a combination of moderate sized protrusion and facet arthropathy caused mild
16 central canal spinal stenosis. AR 933. Plaintiff "otherwise [had] an unremarkable lumbar spine
17 MRI examination." AR 931. In March 2010, Dr. Leong noted that morphine and Vicodin helped
18 relived Plaintiff's pain with no side effects. On May 6, 2010, Dr. Leong completed a physical
19 assessment which the ALJ summarized as follows. AR 968-973.

20 Dr. Leong completed a Physician Residual Functional Capacity Questionnaire the day
21 before the 2010 hearing. He diagnosed "back pain," and cited an MRI showing
22 degenerative disc disease at L4-5 and L5-S1. He opined the claimant's pain or other
23 symptoms were severe enough to frequently interfere with attention and
24 concentration. He opined that stress worsened her ability to deal with pain, and
25 opined she was incapable of even low stress jobs. Dr. Leong opined that the claimant
26 was able to walk less than one block at a time, sit no more than two hours at a time,
27 and stand one hour at a time. In an eight-hour workday, she was able to stand/walk
28 less than two hours and sit at least six hours out of eight. She did not need to include
periods of walking around. She did not need to sit or stand at will. She would need
unscheduled breaks four times a day for 15 minutes. She needed a cane while
engaging in occasional standing/walking. The claimant was able to rarely lift ten
pounds and occasionally lift less than ten pounds. She was unable to twist, stoop,
crouch, and climb ladders and stairs. She had no limitations in reaching, handling, or
fingering, and had 100 percent ability to perform manipulative activities. Her
impairments were likely to produce good days and bad days. She would be absent
from work more than four days per month.

I give little weight to Dr. Leong's opinion because it assesses a residual functional
capacity that is not supported by objective findings. Moreover, other evidence

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

undermines the credibility of the claimant’s subjective symptoms. Dr. Leong’s opinion suggests a capacity for sedentary work, excepting unscheduled breaks and excessive absences. Of note, he reported only “some difficulty walking and standing,” not inability to ambulate effectively (i.e., he did not state that she needed an assistive device). Medical findings do not support need for an extra 15 minute break four times a day, or absence from work one day per week (on average).

AR 40.

C. The ALJ Correctly Weighed the Treating Physician Evidence

The Court is persuaded that the ALJ provided adequate specific and legitimate reasons for discounting the opinions of Plaintiff’s treating physicians Drs. Crews and Leong. This Court’s decision is grounded on three reasons.

First, the ALJ properly determined that the inconsistencies between certain details contained in the treating physicians’ reports undermined the reliability of those opinions. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (holding that the existence of internal inconsistencies within a treating physician’s opinion constitutes a specific and legitimate reason for the ALJ to reject that physician’s opinion concerning the claimant’s functional limitations); *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (holding that the ALJ properly discounted a treating physician’s functional recommendations that “were so extreme as to be implausible and were not supported by any findings made by any doctor,” including the treating physician’s own findings).

As the ALJ noted, Dr. Crews determined in her 2008 opinion that if Plaintiff had a sedentary job, she would need to elevate her leg 100% of the time. AR 777. In rejecting this elevation restriction, the ALJ stated that the restriction was inconsistent with Dr. Crews own medical observation that Plaintiff experienced swelling only at the end of the day. AR 39; 747, 783-84. The inconsistency between Dr. Crews’ medical observations and opined limitations provided a sound reason to reject this opinion. *See* 20 C.F.R. § 416.927(c)(2) (providing for consideration of medical opinions that are inconsistent internally or inconsistent with other evidence); *Johnson v. Shalala*, 60 F.3d 1428, 1432-33 (9th Cir. 1995) (holding that the ALJ may disregard even a treating physician’s opinion when it is internally inconsistent); *Matney v. Sullivan*, 981 F.2d 1016, 1020 (9th Cir. 1992) (concluding that internal inconsistencies and ambiguities within the doctor’s opinion provided specific and legitimate reasons for the ALJ to reject the opinion).

1 The ALJ's decision to reject the elevation restriction was further supported by other evidence
2 in the record that did not support such stringent leg limitations. Dr. Leong specifically noted that
3 Plaintiff did not need to elevate her legs while sitting (AR 971), and the record reflects numerous
4 instances where examinations revealed no joint swelling. See AR 1063, 1068, 1076, 1080, 1090,
5 1110, 1113. Accordingly, substantial evidence also supported the ALJ's determination that Dr.
6 Crews' leg limitations were entitled to "no weight."

7 Similarly, with respect to Dr. Leong's opinion, the ALJ found that internal inconsistencies
8 limited the validity of his treating opinion. The ALJ noted that while Dr. Leong diagnosed an
9 "apparent history of fibromyalgia, there was no evidence, findings, or work up for fibromyalgia,
10 hence no basis for finding a medically determined impairment of this kind." AR 40. Dr. Leong's
11 fibromyalgia diagnosis essentially had no objective basis and was therefore wholly inconsistent with
12 his diagnostic testing and treatment of Plaintiff.

13 The ALJ also noted other inconsistencies between Dr. Leong's RFC findings and his
14 treatment notes. For example, the ALJ noted that Dr. Leong opined that Plaintiff would require
15 "unscheduled breaks and excessive absences" AR 40; 970-73. However, Dr. Leong's progress notes
16 reflect that Plaintiff's MRI "showed a moderate sized protrusion at L4-5 causing mild central canal
17 spinal stenosis" but Plaintiff "otherwise [had] an unremarkable lumber spine MRI examination."
18 AR 40, 931. The ALJ further noted that, "in March 2010, Dr. Leong noted that morphine and
19 Vicodin helped relieve her pain, with no side effects." AR 40, 928. Despite these relatively mild
20 objective findings, Dr. Leong found that Plaintiff would need to take more than four breaks a day
21 and would be absent more than four times a month. The ALJ is entitled to reject a doctor's opinion
22 that is self-contradictory. *Johnson v. Shalala*, 60 F.3d at 1433; *Morgan v. Comm'r*, 169 F.3d at 603
23 (internal inconsistencies within a doctor's report constitutes a legitimate basis for rejecting report).
24 Internal inconsistencies therefore provided an adequate basis to discount the opinions of Plaintiff's
25 treating physicians.

26 Second, the ALJ found that Plaintiff's treating physicians based their opinions, in part, on
27 Plaintiff's subjective statements, which were not entirely credible. A treating physician's opinion
28 based on subjective complaints of a claimant whose credibility has been discounted can be properly

1 disregarded. *Tonapetyan*, 242 F.3d at 1149. In discounting Dr. Crews' opinion, the ALJ pointed to
2 Dr. Crews' findings that Plaintiff gave an exaggerated response during a spinal examination. AR 39.
3 Plaintiff's exaggerated responses were a legitimate reason to treat Dr. Crews' opinion cautiously.

4 Relatedly, when evaluating Dr. Leong's opinion, the ALJ determined that other evidence
5 undermined the credibility of Plaintiff's subjective statements. Indeed, the ALJ noted that at several
6 times throughout the record, Plaintiff was untruthful about her history of drug use; an objective test
7 of memory malingering (TOMM) indicated that Plaintiff was trying to misrepresent her cognitive
8 ability; and at least two doctors reported malingering behavior. AR 40-41, 45. The ALJ thus
9 properly concluded that the opinions of treating physicians Crews and Leong were further
10 undermined by Plaintiff's lack of credibility.

11 Third, the ALJ found that there was little medical evidence to support the opinions of Drs.
12 Crews and Leong. A lack of supporting clinical findings is a valid reason for rejecting a treating
13 physician's opinion. *Magallanes v. Bowen*, 881 F.2d at 751. Here, the ALJ thoroughly described the
14 treating physicians' opinions of Plaintiff's impairments and resulting limitations. The ALJ
15 concluded however that the numerous diagnostic studies performed do not support the severity of
16 symptoms as alleged by Plaintiff's treating physicians. Plaintiff's treating physicians found that she
17 could rarely lift less than ten pounds, that she could not walk a full city block, and that she must
18 elevate her leg 100% percent of the time. Contrary to these extreme limitations, the ALJ noted that
19 the evidence does not indicate any abnormality involving Plaintiff's lower left extremity. AR 44.
20 Records from Dr. Crews show knee surgery in April 2008, and while Plaintiff continued to complain
21 of knee pain post-surgery, there is no medical evidence of additional knee surgeries, injections,
22 physical therapy, or any other treatment beyond pain medication. AR 45.

23 With respect to Plaintiff's back pain, the ALJ found that while Plaintiff was sent for further
24 testing at Stanford, she did not attend. Additionally, in 2013 she told her emergency room doctor
25 that "she had neck and back pain every now and again, and reported it lasted for 30 minutes." AR
26 41. Without substantial evidence to support the opinions of the treating physicians, the ALJ was
27 entitled to disregard these opinions as unsupported by clinical findings. *Matney*, 981 F.2d at 1019.

1 Based on the specific and legitimate reasons opined by the ALJ, the Court will not reverse or
2 remand the ALJ’s decision for failure to adopt the opinions of Plaintiff’s treating physicians.

3 **3. Plaintiff’s Examining Psychiatrist – Les Kalman M.D.**

4 Finally, Plaintiff argues that the ALJ erred by rejecting the opinion of her examining
5 psychiatrist, Dr. Kalman. In particular, Plaintiff challenges the ALJ’s decision to discredit Dr.
6 Kalman’s 2008 and 2010 examining opinions because Dr. Kalman failed to acknowledge Plaintiff’s
7 inconsistent statements about her “ongoing use of cannabinoids.” AR 43. According to Plaintiff,
8 the ALJ’s finding here is neither specific nor legitimate because the ALJ found that her “drug abuse
9 has been in remission since 2008.” (Doc. 17 at 22). Plaintiff further argues that the ALJ failed to
10 explain why the use of marijuana makes Dr. Kalman’s opinions any less valid, particularly because
11 Dr. Kalman’s 2010 opinion was during a period of remission as found by the ALJ. (Doc. 17 at 22).

12 The ALJ’s rationale in rejecting Dr. Kalman’s opinion based on Plaintiff’s inconsistent
13 statements about her drug use was a specific and legitimate reason to discount Dr. Kalman’s opinion.
14 Here, the ALJ gave little weight to Dr. Kalman’s opinion in part because of the failure to mention
15 Plaintiff’s drug use despite evidence in the record showing that her marijuana use was pervasive and
16 ongoing. AR 43. Indeed, Dr. Kalman does not mention Plaintiff’s history of marijuana use in either
17 his 2008 examining report or his 2010 questionnaire. AR 765, 950-952. Nothing in the record
18 indicates that Dr. Kalman had any awareness of Plaintiff’s inconsistent substance-abuse history.

19 When Dr. Kalman asked Plaintiff about her drug use in 2008 and 2010 she apparently falsely
20 reported five years of abstinence from drugs. AR 765, 951. But, as the ALJ noted, Plaintiff tested
21 positive for THC (cannabinoids) on no less than four occasions while she was attending a “dual
22 diagnosis group” at Stanislaus County Behavioral Health (“SCBH”) between October 2007 and
23 February 26, 2008. AR 42, 603. The ALJ noted that Plaintiff was not honest in her history when it
24 came to her substance use. AR 44.

25 Dr. Kalman’s apparent ignorance of Plaintiff’s drug abuse was relevant to the ALJ’s
26 assessment of the weight to give his opinion. *Edlund v. Massanari*, 253 F.3d 1152, 1157 & n.6 (9th
27 Cir. 2001) (as amended) (“[n]ature and extent of the treatment relationship” and “the more
28 knowledge a treating source has about your impairment(s)” are relevant factors in assessing treating-

1 source opinion; *see also* § 416.927(c)(6) (extent to which doctor is familiar with record is relevant
2 factor in deciding weight to give opinion). Dr. Kalman was not fully aware of Plaintiff’s ongoing
3 drug use. He relied on Plaintiff’s statements to determine Plaintiff’s diagnosis and functioning, yet
4 Plaintiff’s statements were unreliable. Because the ALJ found Plaintiff to be “not entirely credible”
5 (AR 45), in part due to “inconsistent statements regarding drug abuse” that she provided to Dr.
6 Kalman (AR 44)—findings Plaintiff has not challenged—the ALJ properly gave little weight to Dr.
7 Kalman’s opinions.

8 Moreover, the ALJ found that Dr. Kalman’s mental impairment opinions were inconsistent
9 with those from SCBH and other treating and examining sources. AR 42, 44. While Plaintiff argues
10 that the ALJ erred in finding a conflict between Dr. Kalman’s examining report and the progress
11 notes written largely by “non-acceptable medical sources” *i.e.* licensed therapists and behavioral
12 health specialists at SCBH, this was not error for two reasons. First, the ALJ noted that Dr.
13 Kalman’s opinion conflicted with other examining opinions, which included that of Dr. Bolschwing,
14 Ph.D. Dr. Bolschwing performed a psychological consultative examination of Plaintiff on October
15 31, 2007. AR 471-475. The ALJ noted that Dr. Bolschwing found that Plaintiff appears to be
16 malingering her psychiatric symptoms. AR 474. Despite that, Dr. Bolschwing opined that Plaintiff
17 was able to understand, remember and carry out simple instructions without difficulty. Plaintiff was
18 also able to maintain attention and concentration and endure stress. AR 41, 474. This opinion was
19 arguably in conflict with Dr. Kalman’s findings that Plaintiff’s impairments would cause her to miss
20 work more than 3 or 4 times a month.

21 Second, in addition to Dr. Bolschwing’s report, the ALJ appropriately gave credence to the
22 progress notes from SCBH. According to SSR 06–03p, an ALJ may use evidence from “other
23 sources,” including licensed therapists, to show the severity of the individual’s impairment(s) and
24 how it affects the individual’s ability to function. *See* SSR 06–03p (the opinions of medical sources
25 who are not “acceptable medical sources,” including nurse practitioners, physician assistants, and
26 licensed clinical social workers, “are important and should be evaluated on key issues such as
27 impairment severity and functional effects, along with other relevant evidence in the file,” in light of
28 “the growth of managed health care in recent years and the emphasis on containing medical costs”).

1 Here in finding that Dr. Kalman’s opinions were inconsistent with the record, the ALJ noted
2 that Dr. Kalman was not a treating source. The ALJ contrasted Dr. Kalman’s examinations,
3 occurring on two occasions, with the treatment summary from SCBH over a period of 16 months. In
4 comparison, notes from Plaintiff’s treatment at SCBH demonstrated that Plaintiff is “persistent and
5 intelligent (tested out at genius level in second grade,” but her attendance was sporadic, she made
6 little progress, and she “tested positive for THC (cannabinoids) every time she was tested.” AR 42,
7 608. “Plaintiff was [subsequently] discharged for non-participation.” AR 42. Ultimately, this
8 evidence, in addition to other treating and examining evidence, undercut Dr. Kalman’s findings. AR
9 44. The ALJ’s analysis with respect to Dr. Kalman’s opinion was therefore sufficient.

10 Having thoroughly reviewed the ALJ’s evaluation of the medical evidence, the Court finds
11 that the ALJ’s decision was based on substantial evidence and he supported his findings with
12 specific and legitimate reasoning. Accordingly, the Court will not reverse or remand the ALJ’s
13 decision for failure to appropriately weigh the medical evidence.

14 **CONCLUSION**

15 Based on the foregoing, the Court finds that the ALJ’s decision is supported by substantial
16 evidence in the record as a whole and is based on proper legal standards. Accordingly, this Court
17 **DENIES** Plaintiff’s appeal from the administrative decision of the Commissioner of Social Security.
18 The Clerk of this Court is **DIRECTED** to enter judgment in favor of Defendant Nancy Berryhill,
19 Acting Commissioner of Social Security and against Plaintiff, Tanya St. John.
20 IT IS SO ORDERED.

21 Dated: August 18, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE