



1 applications at both the initial level and upon reconsideration. (*See generally* Doc. 10-4) After  
2 requesting a hearing, Plaintiff testified before an ALJ on January 21, 2014. (Doc. 7-3 at 15, 34) The  
3 ALJ determined Plaintiff was not disabled and issued an order denying benefits on March 6, 2014.  
4 (*Id.* at 15-25) When the Appeals Council denied Plaintiff’s request for review of the decision on July  
5 21, 2015 (*id.* at 2-4), the ALJ’s findings became the final decision of the Commissioner of Social  
6 Security (“Commissioner”).

### 7 **STANDARD OF REVIEW**

8 District courts have a limited scope of judicial review for disability claims after a decision by  
9 the Commissioner to deny benefits under the Social Security Act. When reviewing findings of fact,  
10 such as whether a claimant was disabled, the Court must determine whether the Commissioner’s  
11 decision is supported by substantial evidence or is based on legal error. 42 U.S.C. § 405(g). The ALJ’s  
12 determination that the claimant is not disabled must be upheld by the Court if the proper legal standards  
13 were applied and the findings are supported by substantial evidence. *See Sanchez v. Sec’y of Health &*  
14 *Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987).

15 Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a  
16 reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.  
17 389, 401 (1971) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197 (1938)). The record as a whole  
18 must be considered, because “[t]he court must consider both evidence that supports and evidence that  
19 detracts from the ALJ’s conclusion.” *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985).

### 20 **DISABILITY BENEFITS**

21 To qualify for benefits under the Social Security Act, Plaintiff must establish he is unable to  
22 engage in substantial gainful activity due to a medically determinable physical or mental impairment  
23 that has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C.  
24 § 1382c(a)(3)(A). An individual shall be considered to have a disability only if:

25 his physical or mental impairment or impairments are of such severity that he is not  
26 only unable to do his previous work, but cannot, considering his age, education, and  
27 work experience, engage in any other kind of substantial gainful work which exists in  
28 the national economy, regardless of whether such work exists in the immediate area  
in which he lives, or whether a specific job vacancy exists for him, or whether he  
would be hired if he applied for work.

1 42 U.S.C. § 1382c(a)(3)(B). The burden of proof is on a claimant to establish disability. *Terry v.*  
2 *Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990). If a claimant establishes a prima facie case of disability,  
3 the burden shifts to the Commissioner to prove the claimant is able to engage in other substantial  
4 gainful employment. *Maounois v. Heckler*, 738 F.2d 1032, 1034 (9th Cir. 1984).

### 5 ADMINISTRATIVE DETERMINATION

6 To achieve uniform decisions, the Commissioner established a sequential five-step process for  
7 evaluating a claimant’s alleged disability. 20 C.F.R. §§ 404.1520, 416.920(a)-(f). The process requires  
8 the ALJ to determine whether Plaintiff (1) engaged in substantial gainful activity during the period of  
9 alleged disability, (2) had medically determinable severe impairments (3) that met or equaled one of the  
10 listed impairments set forth in 20 C.F.R. § 404, Subpart P, Appendix 1; and whether Plaintiff (4) had  
11 the residual functional capacity (“RFC”) to perform to past relevant work or (5) the ability to perform  
12 other work existing in significant numbers at the state and national level. *Id.* The ALJ must consider  
13 testimonial and objective medical evidence. 20 C.F.R. §§ 404.1527, 416.927.

#### 14 **A. Relevant Medical Evidence**

15 Plaintiff was in a car accident on January 18, 2010 and was transported to an emergency room,  
16 where x-rays showed “mild lumbar scoliosis” and “flattening” of her thoracic and lumbar curves. (Doc.  
17 10-9 at 11, 21) She had a follow up appointment with the treating physician, Dr. Ajit Khaira, the next  
18 day, and Dr. Khaira noted Plaintiff received prescription pain medication. (Doc. 10-8 at 17)

19 Although Plaintiff returned to Dr. Khaira for treatment a few times in 2010, she did not report  
20 having any back pain. (Doc. 10-8 at 13-15) Rather, her complaints included a cough, sinus problems,  
21 chest pain, headaches, and nose bleeds. (*Id.*)

22 Plaintiff did not again report having pain in her back until July 2011. (*See* Doc. 10-8 at 10-17)  
23 When Plaintiff returned to Dr. Khaira a week later, she did not report having any pain. (*Id.* at 9)  
24 Plaintiff said she had watery eyes, and said she “walk[ed] everyday and need[ed] help losing weight.”  
25 (*Id.*) Dr. Khaira did not indicate that Plaintiff reported having back pain for the remainder of 2011.  
26 (*See id.* at 4-8)

27 Dr. Roger Wagner performed a comprehensive internal medicine evaluation on March 30, 2012.  
28 (Doc. 10-8 at 20) Plaintiff described having “low back pain with occasional radiation to the right

1 buttock,” which occurred “off and on” and was exacerbated by “[b]ending, lifting, or long-term  
2 stooping.” (*Id.*) She told Dr. Wagner she could “perform her own activities of daily living without  
3 assistance,” including cooking, cleaning, driving, and shopping. (*Id.*) Dr. Wagner observed:

4 [Plaintiff] was easily able to get up and out of the chair in the waiting room, walk at a  
5 normal pace back to the exam room without assistance, and sat completely comfortably  
6 throughout the entire history taking. The claimant was easily able to get on and off the  
exam table, very easily able to bend over at the waist and take shoes off and put them on  
without difficulty. She demonstrates good manual dexterity while doing so.

7 (*Id.* at 21) Dr. Wagner noted Plaintiff “was easily able to toe walk and heel walk,” though she  
8 “complain[ed] of some low back pain when walking on toes.” (*Id.* at 22) Dr. Wagner found Plaintiff  
9 had a negative straight leg raising test in the seating position, and positive in the “supine [position] at  
10 90 degrees on the right and left, with [Plaintiff] having low back pain without radiation.” (*Id.* at 23)  
11 He determined Plaintiff had “no real lumbar paravertebral muscle spasms or tenderness,” and her  
12 strength was “5/5” in each extremity. (*Id.*) In addition, Plaintiff’s touch and pinprick senses were  
13 intact. (*Id.*) Dr. Wagner noted that upon reviewing the medical clinic notes, Plaintiff had “waxing and  
14 waning complaints of migrating myalgias,” but it was “[u]nclear if there was “anything in her back  
15 other than muscle strain.” (*Id.*) He concluded Plaintiff did not have any limitations with sitting,  
16 standing, or walking. (*Id.*) Further, he opined Plaintiff was able to lift and carry “50 pounds  
17 occasionally [and] 25 pounds frequently,” and “should stoop no more than frequently.” (*Id.*) Dr.  
18 Wagner believed Plaintiff did not have any manipulative or environmental limitations. (*Id.* at 23-24)

19 Dr. Michael Cohn conducted a comprehensive psychiatric evaluation on April 2, 2012. (Doc.  
20 10-8 at 27) Plaintiff told Dr. Cohn that she was seeking benefits for “severe back problems and other  
21 physical problems but no psychiatric issues. (*Id.*) Plaintiff said she had “not experienced any  
22 psychiatric problems whatsoever,” and denied receiving psychiatric or psychological treatment of any  
23 kind. (*Id.*) She reported she was “able to take care of dressing, bathing and personal hygiene without  
24 difficult,” drive a vehicle, pay bills, and run errands alone. (*Id.* at 28) Plaintiff told Dr. Cohn “[s]he  
25 stopped working because of budget cuts and was essentially laid off.” (*Id.*) She said each day she  
26 “uses her computer to look for jobs, cleans her apartment to the extent that she is able given her  
27 physical limitations, cares for her grandchild,” prepares meals, and watches television. (*Id.*) Dr. Cohn  
28 opined that Plaintiff’s stream of mental activity, concentration, and judgment were within normal

1 limits. (*Id.* at 29-30) He concluded Plaintiff's ability to understand, remember, and carry out either  
2 simple or complex job instructions was "unimpaired." (*Id.* at 30) Dr. Cohn determined also that  
3 Plaintiff had "unimpaired" ability to maintain attention, concentration, persistence and pace; to accept  
4 instructions; maintain regular attendance; and interact with co-workers and the public. (*Id.* at 30-31)  
5 Dr. Cohn observed that Plaintiff's only "psychosocial stressor[]" during the past year" was a hand  
6 injury, and gave Plaintiff a GAF score of 75.<sup>2</sup> (*Id.* at 30)

7 On April 6, 2012, Plaintiff went to the emergency room for shortness of breath, chest pain, and  
8 dizziness. (Doc. 10-8 at 40, 48) She reported she "ha[d] not felt well for almost 2-3 weeks." (*Id.* at  
9 40) Upon examination, Plaintiff did not have any tenderness, and had normal strength and range of  
10 motion. (*Id.* at 49) However, Plaintiff's blood sugar level was 397, and she was "admitted with new  
11 onset diabetes mellitus." (*Id.*) She received counseling regarding diabetes, and said she wanted to take  
12 an "oral hypoglycemic, other than insulin." (*Id.* at 41)

13 Plaintiff had a follow-up appointment with Dr Khaira the following day, at which time they  
14 established her diabetes treatment. (Doc. 10-8 at 87) A week later, for a second follow-up regarding  
15 her sugar levels, Plaintiff reported she had "loss of sleep [and] rapid heart rate at night," and Dr. Khaira  
16 adjusted the medication. (*Id.* at 86) In May 2012, Plaintiff told Dr. Khaira that a medication was  
17 "making her feel sick," and that everything she ate caused her to feel nauseous, and Dr. Khaira adjusted  
18 her medications. (*Id.* at 80-84)

19 Dr. Ian Ocrant reviewed the record in May 2012, and noted Plaintiff had been diagnosed with  
20 diabetes, and had complained of back pain, headaches, nose bleeds, dizziness, bodyaches, fever,  
21 headaches, and pain in her hands. (Doc. 10-4 at 7) He concluded Plaintiff's physical impairments were  
22 "non-severe." (*Id.* at 7-8)

23 In August 2012, Plaintiff returned to Dr. Khaira and reported that her sugar levels had been low  
24 and she was "cutting down on" her medication. (Doc. 10-8 at 80) In addition, Plaintiff told Dr. Khaira  
25 that she had low back pain. (*Id.*) Dr. Khaira indicated that the results of Plaintiff's musculoskeletal/  
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27 <sup>2</sup> GAF scores range from 1-100, and in calculating a GAF score, the doctor considers "psychological, social, and  
28 occupational functioning on a hypothetical continuum of mental health-illness." American Psychiatric Association,  
*Diagnostic and Statistical Manual of Mental Disorders*, 34 (4th ed.) ("DSM-IV). With a GAF score between 71-80, "[i]f  
symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating  
after family argument); no more than slight impairment in social, occupational, or school functioning..." *DSM-IV* at 34.

1 extremities and back examinations were within normal limits. (*Id.*) Plaintiff continued to report having  
2 low back pain in October 2012. (*Id.* at 78) Again, Dr. Khaira indicated that an examination of  
3 Plaintiff's back was normal. (*Id.*)

4 In late September 2012, Plaintiff reported that she had chest pain for a week. (*See* Doc. 10-9 at  
5 3, 23-24) Dr. Ronald Thant reviewed x-rays of Plaintiff's ribs and chest on October 4, 2012, and found  
6 her chest was "[n]ormal," and there was no evidence of a rib fracture. (*Id.*)

7 Dr. Robert Scott reviewed the medical record in December 2012, and concluded that Plaintiff  
8 did not have a medically determinable mental impairment. (Doc. 10-4 at 53, 54)

9 In January 2013, Plaintiff reported she did not have an MRI done, because medicine prescribed  
10 by Dr. Khaira in November did not help her relax. (Doc. 10-11 at 21, 25) In addition, Plaintiff  
11 reported that she fell "asleep all the time" and was "always sleepy." (*Id.*) Dr. Khaira observed that  
12 Plaintiff "ambulate[d] to the examination room without assistance" and was "able to sit comfortably on  
13 the examination without difficulty or evidence of pain." (*Id.* at 22) Dr. Khaira noted it was possible  
14 Plaintiff was "getting hypoglycemic as her sugar... [was] low even after she ha[d] eaten." (*Id.*)

15 Plaintiff told Dr. Khaira in March 2013 that she felt dizzy after eating to take medication. (Doc.  
16 10-11 at 19) Dr. Khaira noted Plaintiff's sugar level was at 31, and she was given extra sugar, after  
17 which she felt better. (*Id.*) Upon examination, Dr. Khaira found "no evidence of bony tenderness, joint  
18 effusion, enlargement..., muscle fasciculations, atrophy, muscle weakness, asymmetry or reduced  
19 range of motion." (*Id.* at 20) According to Dr. Khaira, Plaintiff had normal strength of muscles and  
20 normal reflexes. (*Id.*)

21 On May 7, 2013, Plaintiff had an MRI of her lumbar spine. (Doc. 10-11 at 32) Dr. Bruce  
22 Ginier determined Plaintiff had a "left posterolateral disc bulge or protrusion ...effacing the left lateral  
23 recess and likely compromising the left S1 nerve root" at the L5-S1 level. (*Id.* at 33) Dr. Ginier also  
24 determined that Plaintiff had "[m]ild to moderate central canal narrowing at L4-L5" and "[m]ild central  
25 canal narrowing at L3-L4," which were "secondary to posterior disc bulge in conjunction with facet  
26 and ligamentum flavum hypertrophy." (*Id.*) At a follow-up examination after the MRI, Dr. Khaira  
27 observed that Plaintiff had back pain "with flexion beyond 60 degrees." (*Id.* at 13)

28 In June 2013, Dr. Khaira noted that Plaintiff had back pain "with flexion beyond 45 degrees."

1 (Doc. 10-11 at 10) Plaintiff continued to demonstrate low back pain and joint pain upon examination in  
2 September 2013. (*Id.* at 4-5)

3 Dr. Ajit Khaira completed a “Physical Medical Source Statement” on January 16, 2014. (Doc.  
4 10-11 at 36-38) Dr. Khaira noted that Plaintiff had been diagnosed with diabetes, hypertension, and  
5 back ache. (*Id.* at 36) Dr. Khaira indicated Plaintiff’s symptoms included “back / leg / neck pain [and]  
6 headaches.” (*Id.*) According to Dr. Khaira, Plaintiff could walk less than one block without needing to  
7 rest, sit for 10 minutes at one time, and stand for 15 minutes at one time. (*Id.*) Dr. Khaira opined that  
8 Plaintiff was able to stand and walk for less than 2 hours in an 8-hour day, and needed to be able to  
9 shift positions, walking every 10-15 minutes. (*Id.* at 36-37) Dr. Khaira believed Plaintiff could lift and  
10 carry less than 10 pounds frequently and 10 pounds occasionally. (*Id.* at 37) In addition, Dr. Khaira  
11 indicated that Plaintiff could rarely twist or stop, occasionally climb ladders, and frequently climb  
12 stairs. (*Id.*) Dr. Khaira concluded Plaintiff’s symptoms were “likely... severe enough to interfere with  
13 attention and concentration needed to perform even simple work tasks,” and she was incapable of  
14 tolerating even ‘low stress work.’” (*Id.* at 38, emphasis omitted) Dr. Khaira did not complete the  
15 section of the form requesting a reason for these conclusions. (*See id.*)

16 **B. Lay Witness Statements**

17 1. Rodney Newsom

18 Plaintiff’s husband, Rodney Newsom, completed a Third Party Function Report in March 2012.  
19 (Doc. 10-7 at 29) He noted that Plaintiff had “constant radiating pains up both forearms and back,”  
20 which disturbed her sleep. (*Id.* at 30) Mr. Newsom noted that he talked with Plaintiff, went to movies,  
21 and attended outdoor events. (*Id.* at 29) According to Mr. Newsom, Plaintiff enjoyed playing tennis  
22 and exercising, and did these things on a daily basis. (*Id.* at 33)

23 Mr. Newsom reported Plaintiff was able to take care of her personal hygiene, “prepare meals,  
24 and do household chores, and go shopping.” (Doc. 10-7 at 29-30) However, in another section of the  
25 questionnaire, Mr. Newsom indicated that Plaintiff was unable to do any household chores. (*Id.* at 31)  
26 He believed Plaintiff had difficulty with zipping trousers, buttoning a blouse, and holding utensils. (*Id.*  
27 at 30) Mr. Newsom indicated that Plaintiff had problems with walking more than 25 yards bending,  
28 and handling. (*Id.* at 33-34) In addition, he indicated that Plaintiff’s impairments affected her ability to

1 lift, squat, bend, stand, reach, walk, kneel, climb stairs, use her hands, follow instructions, and  
2 concentrate. (*Id.* at 34) Mr. Newsom also noted that Plaintiff wore a neck brace, which he believed was  
3 prescribed in November or December 2011. (Doc. 10-7 at 36)

4 2. Jessica Wosick

5 Ms. Wosick reported that she is “a family friend of [Plaintiff’s] as well as a distant member of  
6 her family.” (Doc. 10-7 at 53) Ms. Wosick stated she has known Plaintiff since 2008, and had watched  
7 Plaintiff’s body “deteriorate.” (*Id.*) She stated that she observed Plaintiff’s pain made “it hard for her  
8 to do ordinary everyday things,” including walking up stairs and going grocery shopping. (*Id.*) Ms.  
9 Wosick believed that “everyday easy activities [took] a toll on [Plaintiff] to complete” and her quality of  
10 life had decreased. (*Id.*) She reported:

11 Patricia has issue[s] even falling asleep comfortably and I have seen the lack of energy  
12 due to sleepless nights involving pain. Patricia has had issue[s]with getting out of bed,  
13 which also prompts her mood to become depressed. I have seen her crying due to pain  
14 and frustration that her body cannot move like it once did. The toll it has taken on her  
mind, body, and soul is irreversible. Her interdependence has been taken away by this  
back pain; she is a completely different person now. Simple activities such as bathing,  
bending, and even giving a hug have become difficult for her.

15 Ms. Wosick noted she went to the grocery store for Plaintiff or met her there “to assist her due to the  
16 pain.” (*Id.*) Further, Ms. Wosick stated she witnessed Plaintiff having “episodes of severe depression  
17 and moodiness.” (*Id.*)

18 3. Shannon Williamson

19 Plaintiff’s brother, Shannon Williamson, prepared a lay witness letter in December 2013.  
20 (Doc. 10-7 at 62) Mr. Williams noted that when around Plaintiff, he “noticed she [was] constantly is  
21 (sic) extreme pain, which makes it hard for her to get around and to move without feeling this  
22 excruciating pain.” (*Id.*) According to Mr. Williams, Plaintiff “report[ed] feeling sad to being  
23 depressed because of the pain she endures... and [was] observed to display evidence of her depression  
24 by her sadness, moodiness, irritability,” and remaining inside the house. (*Id.*) Mr. Williamson stated  
25 that Plaintiff “sought the support of... family members due to her increased sadness and depression of  
26 not being able to functioning without feeling the ability of carrying out simple tasks.” (*Id.*) Further,  
27 he noted he “witnessed [Plaintiff] waking up while asleep screaming from the pain she experiences,”  
28 including “pain in her legs, feet, and buttocks.” (*Id.*) Mr. Williamson believed Plaintiff was “willing



1 to try to do things, but her stamina to complete tasks are very difficult to complete due to her chronic  
2 pain and suffering.” (*Id.*)

3 **C. Administrative Hearing Testimony**

4 Plaintiff testified at a hearing before the ALJ on January 21, 2014. (Doc. 10-3 at 34) She  
5 reported she had a high school education, and completed some vocational training on computers. (Doc.  
6 10-3 at 37) Plaintiff stated that her past work including “working with disability women” at a group  
7 home, which involved taking them on outings, changing diapers, and lifting. (*Id.* at 40-41) She last  
8 worked for the IRS when she “tried to switch up” jobs. (*Id.* at 41)

9 Plaintiff reported she had constant back pain that was “almost unbearable.” (Doc. 10-3 at 42-  
10 43) She said it hurt when she reached, bent, and stretched. (*Id.* at 42) In addition, Plaintiff testified  
11 that sitting too long exacerbated the pain. (*Id.* at 44) Plaintiff stated that she took medication for the  
12 pain, though she tried “not to take it too much,” and used heating and icing pads. (*Id.* at 45-46)

13 She said she was able to do household chores, but “[n]ot like [she] used to.” (Doc. 10-3 at 38)  
14 She stated it was “very frustrating” and she was still trying to wash dishes. (*Id.*) Plaintiff testified she  
15 “used to go walking a lot,” but it felt like there were “weights on [her] back.” (*Id.* at 39) Plaintiff said  
16 that “[o]n a bad day,” she was exhausted and had to rest. (*Id.* at 40) She stated she needed assistance  
17 with showering, because she had recently dropped her soap and her “vision went black” when she bent  
18 over to pick it up. (*Id.* at 38) Plaintiff said since that time, her husband “kind of makes sure” she is  
19 “not so fast ... to bend over.” (*Id.*)

20 Plaintiff estimated that “[o]n a good day,” she could lift and carry 10 pounds. (Doc. 10-3 at 47)  
21 She also believed she sit for “10/15” minutes, stand “around four or five minutes,” and walk [l]ess than  
22 one block” at a time. (*Id.* at 48) Plaintiff stated she could not reach overhead or to the front without  
23 pain. (*Id.*) According to Plaintiff, she rested for “[f]our to five hours” each day, and longer on bad  
24 days. (*Id.* at 49) She reported she had only “two to three... good days” each week. (*Id.* at 50)

25 **D. The ALJ’s Findings**

26 Pursuant to the five-step process, the ALJ determined Plaintiff did not engage in substantial  
27 gainful activity after the alleged onset date of December 1, 2010. (Doc. 10-3 at 17) At step two, the  
28 ALJ found Plaintiff’s “lumbar degenerative disc disease” was a severe impairment. (*Id.* at 18) At step

1 three, the ALJ determined Plaintiff did not have an impairment, or combination of impairments, that  
2 met or medically equaled a Listing, including Listing 1.04. (*Id.*) Next, the ALJ determined:

3 [T]he claimant has the residual functional capacity to lift and/or carry 20 pounds  
4 occasionally and 10 pounds frequently; sit, stand and/or walk 6 to 8 hours each in an 8-  
5 hour workday; and occasionally stoop, crouch, crawl, kneel, and climb. She must be  
6 able to sit or stand at will.

7 (*Id.*) Based upon this RFC, the ALJ concluded Plaintiff was “unable to perform any part relevant  
8 work.” (*Id.* at 23) In addition, the ALJ determined Plaintiff was able to perform other “jobs that exist  
9 in significant numbers in the national economy.” (*Id.* at 24) Consequently, the ALJ found Plaintiff  
10 was not disabled as defined by the Social Security Act. (*Id.* at 24-25)

### 11 **DISCUSSION AND ANALYSIS**

12 Plaintiff contends the ALJ erred at step three, in evaluating whether her impairment meets  
13 Listing 1.04. (Doc. 15 at 11-12) In addition, Plaintiff asserts the ALJ erred in analyzing the medical  
14 record and lay witness statements. (*Id.* at 13-17) On the other hand, the Commissioner argues that  
15 “the ALJ’s decision was supported by substantial evidence and free from reversible legal error.” (Doc.  
16 16 at 10)

#### 17 **A. The ALJ’s Step Three Findings**

18 The Listings set forth by the Commissioner “define impairments that would prevent an adult,  
19 regardless of his age, education, or work experience, from performing any gainful activity, not just  
20 ‘substantial gainful activity.’” *Sullivan v. Zebley*, 493 U.S. 521, 532 (1990) (citation omitted, emphasis  
21 in original). “If the impairment meets or equals a listed impairment, the claimant is conclusively  
22 presumed to be disabled. If the impairment is not one that is conclusively presumed to be disabling, the  
23 evaluation proceeds to the fourth step.” *Bowen v. Yuckert*, 482 U.S. 137, 141; *Tackett v. Apfel*, 180  
24 F.3d 1094, 1099 (9th Cir. 1999).

25 The ALJ determined Plaintiff’s degenerative disc disease does not meet Listing 1.04, which  
26 governs of musculoskeletal impairments and requires a claimant to show a disorder of the spine such  
27 as “herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc  
28 disease, facet arthritis, vertebral fracture[], resulting in a compromise of a nerve root (including the  
cauda equina) or the spinal cord.” 20 C.F.R. Part 404, Subpt P., App. 1, Listing 1.04. In addition,

1 there must be:

2 A. Evidence of nerve root compression characterized by neuro-anatomic distribution  
3 of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle  
4 weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is  
involvement of the lower back, positive straight-leg raising test (sitting and supine); or

5 B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue  
6 biopsy, or by appropriate medically acceptable imaging, manifested by severe burning  
or painful dysesthesia, resulting in the need for changes in position or posture more  
than once every 2 hours; or

7 C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on  
8 appropriate medically acceptable imaging, manifested by chronic nonradicular pain and  
weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

9 *Id.*

10 Plaintiff contends the ALJ erred in her analysis of Listing 1.04, because she “made  
11 contradictory findings as to whether certain requirements of the Listing were met.” (Doc. 15 at 12)

12 Plaintiff observes:

13 On the one hand, the ALJ states that the plaintiff’s degenerative disc disease does not  
14 meet Listing 1.04 criteria because there is no evidence of the compromise of a nerve  
15 root, nerve root compression or positive straight-leg raising test. (AR 17) Yet, on the  
16 other hand, the ALJ cites evidence of a May 2013 MRI scan of plaintiff’s lumbar spine  
showing a disc bulge “likely compressing the S1 nerve root” and that “[plaintiff] tested  
positive for pain on straight-leg raising testing.” (AR 18, 20)

17 (*Id.*, alteration in original) Plaintiff contends that this “contradiction – concerning the determinative  
18 issue of meeting a Listing – does not allow for meaningful view by the District Court.” (*Id.*)

19 Significantly, however, at step three of the sequential evaluation, the claimant bears the burden  
20 of demonstrating her impairments equal a listed impairment. *Bowen*, 482 U.S. at 141; 20 C.F.R. §§  
21 404.1520(d), 416.920(d). The Supreme Court explained, “For a claimant to show that his impairment  
22 matches a listing, it must meet *all* of the specified medical criteria. An impairment that manifests only  
23 some of those criteria, no matter how severely, does not qualify.” *Sullivan*, 493 U.S. at 530 (emphasis  
24 in original). Therefore, to meet his burden at step three, Plaintiff must demonstrate she meets the  
25 Listing requirements. In the alternative, Plaintiff may show her condition “equals” Listing 1.04 with  
26 “symptoms, signs and laboratory findings at least equal in severity and duration to the characteristics of  
27 [the] relevant listed impairment.” *Tackett*, 180 F.3d at 1099 (quoting 20 C.F.R. § 404.1526). Here,  
28 Plaintiff failed to carry that burden.

1 Listing 1.04A requires positive tests in both the supine and sitting positions. *See* 20 C.F.R.  
2 Part 404, Subpt P., App. 1, Listing 1.04A. As noted by the ALJ, Plaintiff's "[s]traight leg raising  
3 testing was negative while seated, but positive for pain at 90 degrees while lying down." (Doc. 10-3 at  
4 20; *see also* Doc. 10-8 at 23) In addition, Dr. Wagner determined that Plaintiff's senses were intact  
5 and her strength was "5/5" in each extremity. (Doc. 10-8 at 23) Plaintiff does not identify any  
6 evidence in the record demonstrating positive straight leg raising tests in both the supine and seated  
7 positions. Consequently, the ALJ did not err in finding that Plaintiff did not meet the requirements of  
8 the Listing 1.04A.

9 **B. Evaluation of the Medical Evidence**

10 In this circuit, the courts distinguish the opinions of three categories of physicians: (1) treating  
11 physicians; (2) examining physicians, who examine but do not treat the claimant; and (3) non-  
12 examining physicians, who neither examine nor treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830  
13 (9th Cir. 1996). In general, the opinion of a treating physician is afforded the greatest weight but it is  
14 not binding on the ultimate issue of a disability. *Id.*; *see also* 20 C.F.R. § 404.1527(d)(2); *Magallanes*  
15 *v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Further, an examining physician's opinion is given more  
16 weight than the opinion of non-examining physician. *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir.  
17 1990); 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

18 A physician's opinion is not binding upon the ALJ, and may be discounted whether or not  
19 another physician contradicts the opinion. *Magallanes*, 881 F.2d at 751. An ALJ may reject an  
20 uncontradicted opinion of a treating or examining medical professional only by identifying "clear and  
21 convincing" reasons. *Lester*, 81 F.3d at 831. In contrast, a contradicted opinion of a treating or  
22 examining professional may be rejected for "specific and legitimate reasons that are supported by  
23 substantial evidence in the record." *Id.*, 81 F.3d at 830. When there is conflicting medical evidence, "it  
24 is the ALJ's role to determine credibility and to resolve the conflict." *Allen v. Heckler*, 749 F.2d 577,  
25 579 (9th Cir. 1984). The ALJ's resolution of the conflict must be upheld when there is "more than one  
26 rational interpretation of the evidence." *Id.*; *see also Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.  
27 1992) ("The trier of fact and not the reviewing court must resolve conflicts in the evidence, and if the  
28 evidence can support either outcome, the court may not substitute its judgment for that of the ALJ").

1 Plaintiff contends the ALJ erred in evaluating the opinion of her treating physician, Dr. Khaira. (Doc.  
2 15 at 13-15) Because the limitations Dr. Khaira assessed were contradicted by physicians who opined  
3 Plaintiff's physical impairments were not severe and she didn't have a medically determinable mental  
4 impairment, the ALJ was required to identify specific and legitimate reasons for rejecting Dr. Khaira's  
5 opinions.

6 In explaining the weight given to the medical opinions, the ALJ indicated "little weight" was  
7 given to the opinions of Dr. Khaira. In doing so, the ALJ found the opinions were unsupported by  
8 medical evidence, were inconsistent with the treatment notes, and the treatment sought and provided.  
9 (See Doc. 10-3 at 19-20) See e.g., *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008); (an  
10 opinion may be rejected where inconsistent with the treatment records); *Magallanes v. Bowen*, 881  
11 F.2d 747, 751 (9th Cir. 1989) (an opinion lacking the support of clinical findings may be rejected).

12 1. Lack of clinical findings

13 The opinion of a physician may be rejected when it is "conclusory and brief" and lacks the  
14 support of clinical findings. *Magallanes*, 881 F.2d at 751; see also *Young v. Heckler*, 803 F.2d 963,  
15 968 (9th Cir. 1986) (a physician's opinion may be rejected "if brief and conclusory in form with little in  
16 the way of clinical findings to support [its] conclusion"). Consequently, the Ninth Circuit determined  
17 that an ALJ may reject or give less weight to a treating physician's opinion that is in the form of a  
18 checklist, where the opinion is brief and lacks supportive objective evidence. See *Crane v. Shalala*, 76  
19 F.3d 251, 253 (9th Cir. 1996) ("The ALJ permissibly rejected . . . check-off reports that did not contain  
20 any explanation of the bases of their conclusion"); *Batson v Comm'r of Soc. Security*, 359 F.3d 1190,  
21 1195 (9th Cir. 2004) ("treating physicians' views carried only minimal evidentiary weight" when in the  
22 form of a checklist and lacking supportive objective evidence).

23 For example, in *Burkhark v. Bowen*, the Ninth Circuit determined the ALJ did not err in  
24 rejecting the opinion of a treating physician where the doctor "provided nothing more than a statement  
25 of his unsupported opinion." *Id.*, 856 F.2d 1336, 1339 (9th Cir. 1988). The court found "[t]here was  
26 no description -- either objective or subjective -- of medical findings, personal observations or test  
27 reports upon which [the physician] could have arrived at his conclusion." *Id.* Without such  
28 information, the Court found there was "no error" by the ALJ rejecting the physician's opinions that

1 the claimant was disabled. *Id.*

2 Similarly, here, Dr. Khaira offered his opinions in a check-box form. As the ALJ observed,  
3 Dr. Khaira “left the part of the form blank that asked him to explain the reason for his conclusion why  
4 the claimant was incapable of low stress work,” and did not offer any diagnoses, signs, symptoms, or  
5 objective findings to support his conclusion. (Doc. 10-3 at 19-20; *see also* Doc. 10-11 at 37) Rather,  
6 as the ALJ concluded, Dr. Khaira’s “opinion that the claimant was incapable of even low stress work  
7 and that she was likely to be ‘off task’ for 25% or more of the workday lacked bases.” (Doc. 10-3 at  
8 19) Given Dr. Khaira’s failure to identify any clinical findings or observations that supported his  
9 conclusions, the ALJ did not err in giving less weight to the opinion of Dr. Khaira.

## 10 2. Inconsistences

11 The Ninth Circuit explained the opinion of an examining physician may be rejected where an  
12 ALJ finds incongruity between a doctor’s assessment and his own medical records and the ALJ  
13 explains why the opinion “did not mesh with [his] objective data or history.” *Tommasetti*, 533 F.3d at  
14 1041. Similarly, inconsistency with the overall record constitutes a legitimate reason for discounting a  
15 physician’s opinion. *Morgan v. Comm’r of the SSA*, 169 F.3d 595, 602-03 (9th Cir. 1999). However,  
16 to reject an opinion as inconsistent with the treatment notes or medical record, the “ALJ must do more  
17 than offer his conclusions.” *Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988). The Ninth Circuit  
18 explained: “To say that medical opinions are not supported by sufficient objective findings or are  
19 contrary to the preponderant conclusions mandated by the objective findings does not achieve the level  
20 of specificity our prior cases have required.” *Id.*, 849 F.2d at 421-22.

21 In this case, the ALJ found the “[t]he physical limitations he opined were not consistent with his  
22 own records.” (Doc. 10-3 at 20) For example, the ALJ noted that treatment records showed Plaintiff  
23 “sat comfortably in his office with no pain.” (*Id.*, citing Exh. 8 F, pp. 21-22 [Doc. 10-11 at 22-23])  
24 The ALJ found the “limitations... we also inconsistent with the normal musculoskeletal hospital  
25 examination in April 2012 showing no joint pain, full motion, and a non-tender back.” (Doc. 10-3 at  
26 20) Further, the ALJ found the limitations “were not consistent with the limitations opined by Dr.  
27 Wagner,” who found Plaintiff had “full motor strength, no sensory deficits, and intact reflexes” and  
28 “could sit, stand, and walk without limitation.” (*Id.*) Finally, the ALJ noted, “Dr. Khaira’s clinical

1 records reflected intermittent complaints of back pain, insufficient to support the extreme limitations  
2 opined.” (*Id.*)

3 Because the ALJ identified inconsistencies in the record—including with Dr. Khaira’s own  
4 treatment records—this is a specific and legitimate reason for giving less weight to the opinions. *See*  
5 *Thommasetti*, 553 F.3d at 1041; *see also Connett v. Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003)  
6 (treating physician’s opinion properly rejected where the treating physician’s treatment notes “provide  
7 no basis for the functional restrictions he opined should be imposed on [the claimant]”).

### 8 3. Treatment provided

9 The Ninth Circuit has determined the opinion of a treating physician may be undermined where  
10 that physician “prescribe[s] a conservative course of treatment,” yet opines a claimant is disabled.  
11 *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001). Here, the ALJ observed there was  
12 “insufficient evidence of any psychiatric treatment” by Dr. Khaira, who opined Plaintiff had mental  
13 limitations and was precluded from low-stress work. (Doc. 10-3 at 20) Indeed, the treatment notes do  
14 not indicate that Plaintiff ever sought psychiatric treatment from Dr. Khaira, and Plaintiff told Dr. Cohn  
15 that she did not have psychiatric issues. (Doc. 10-9 at 27) Accordingly, the lack of treatment supports  
16 the decision to give less weight to the opinion of Dr. Khaira.

### 17 **C. Lay Witness Testimony**

18 Plaintiff contends the ALJ erred in rejecting the lay witness statements offered by family and  
19 friends. (Doc. 15 at 15-17) The ALJ must consider statements of “non-medical sources” including  
20 spouses, parents, and other persons in determining the severity of a claimant’s symptoms. 20 C.F.R.  
21 §404.1513(d)(4); *see also Stout v. Comm’r*, 454 F.3d 1050, 1053 (9th Cir. 2006) (“In determining  
22 whether a claimant is disabled, an ALJ must consider lay witness testimony concerning a claimant’s  
23 ability to do work.”). As a general rule, “lay witness testimony as to a claimant’s symptoms or how an  
24 impairment affects ability to work is competent evidence, and therefore cannot be disregarded without  
25 comment.” *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (emphasis and internal citations  
26 omitted). To discount the testimony of a lay witness, the ALJ must give specific, germane reasons for  
27 rejecting the opinion of the witness. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

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1            1. Rodney Newsom

2            The ALJ rejected the report of Mr. Newsom, explaining his “statements do not establish that the  
3 claimant is disabled.” (Doc. 10-3 at 21-22) In addition, the ALJ noted:

4            There was no evidence showing he [is] medically trained to make exacting observations  
5 as to dates, frequencies, types and degrees of medical signs and symptoms or the  
6 frequency or intensity of unusual mood or mannerisms, so the accuracy of his  
7 statements is questionable. As the spouse of the claimant, the issue of secondary gain  
8 cannot be ruled out – particularly given the claimant’s testimony that her husband was  
9 disabled. Oddly, the claimant reported in her Work Background Report, she worked in  
10 2013 caring for Mr. Newsom by giving him his medication, preparing his meals, and  
11 transporting him to his doctor appointments, so his report that she did little activity was  
12 not credible. (See Exhibit 9D).

13 (*Id.* at 22) Plaintiff contends these reasons were not legally sufficient to reject Mr. Newsom’s  
14 statement. (*See* Doc. 15 at 15-17)

15            The Regulations specifically instruct all administrative law judges to consider testimony from  
16 “non-medical source” who have an opportunity to observe the claimant. 20 C.F.R. §§ 404.1513(d)(4),  
17 416.913(d)(4). Thus, the fact that Mr. Newsom did not have medical training is not a proper reason to  
18 reject his testimony. *See Dodrill*, 12 F.3d at 919 (explaining the Regulations instruct the ALJ to  
19 “consider observations by non-medical sources as to how an impairment affects a claimant’s ability to  
20 work”) (emphasis added). In addition, an ALJ may not reject lay witness testimony solely because the  
21 witness may have “financial interest in seeing the claimant receive benefits.” The Ninth Circuit  
22 explained that an ALJ may not rely on “characteristics common to all spouses,” such as a financial  
23 interest, to discount a spouse’s testimony. *See Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685,  
24 694 (9th Cir. 2009). Nevertheless, a lay witness’s close relationship to a claimant and possible  
25 pecuniary interest in a particular outcome, when coupled with inconsistencies with the record, have  
26 been found to be germane reasons. *See, e.g., Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006).

27            Significantly, here, the ALJ also found Mr. Newsom’s report was inconsistent with the record.  
28 (Doc. 10-3 at 22) As the ALJ observed, Plaintiff reported she prepared Mr. Newsom’s meals and  
transported him to doctor appointments, which was inconsistent with his assertion that “she did little  
activity.” (*See id.*) This inconsistency is a germane reason supporting the decision to reject the  
limitations reported by Mr. Newsom. *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164  
(9th Cir. 2008) (inconsistency with a claimant’s self-reported activities of daily living is a specific and



1 germane reason to discount lay witness' testimony.)

2 2. Jessica Wosik

3 The ALJ gave "the statements and observations of Ms. Wosik little weight." (Doc. 10-3 at 22)  
4 The ALJ observed that Ms. Wosik "was not in a good position to observe the claimant's purported  
5 'constant' pain or sleepless nights." (Doc. 10-3 at 22) Likewise, the ALJ noted Ms. Wosik's statement  
6 that Plaintiff "had difficulty bathing appear[ed] based on the claimant's statement's rather than personal  
7 observation." (*Id.*) As a result, the ALJ concluded the report "lacks bases." (*Id.*)

8 Notably, the Ninth Circuit determined that lay witnesses are only competent to testify as to a  
9 claimant's limitations and condition if "in a position to observe a claimant's symptoms and daily  
10 activities." *Dodrill*, 12 F.3d at 918-919. Because Ms. Wosik was not in such a position, the ALJ  
11 identified a germane reason for rejecting the limitations she identified.

12 3. Shannon Williamson

13 The ALJ noted that Plaintiff's brother, Mr. Williamson "stated he had observed Plaintiff in  
14 excruciating pain" and "having a hard time falling asleep," and that Plaintiff "was sad and depressed  
15 'most' days." (Doc. 10-3 at 22) In addition, Mr. Williamson reported that Plaintiff "had pain to the  
16 extent she could not control her limbs or stand up straight." (*Id.*)

17 The ALJ found Mr. Williamson's "statements were not consistent with the evidence taken as a  
18 whole." (Doc. 10-3 at 22) This is a germane reason for rejecting the lay witness statement. *See*  
19 *Greger*, 464 F.3d at 972; *Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005). In addition, the  
20 ALJ noted that Mr. Williamson lived "approximately 175 miles" away from his sister, and "was not in  
21 a good position to comment on the claimant's daily activities or limitations." (Doc. 10-3 at 22) As  
22 discussed above, this also is a germane reason to not adopt the limitations offered by a lay witness.

23 **CONCLUSION AND ORDER**

24 For the reasons set forth above, the Court finds the ALJ did not err in her analysis of whether  
25 Plaintiff satisfied Listing 1.04. In addition, the ALJ set forth legally sufficient reasons for rejecting the  
26 limitations imposed by Dr. Khaira, as well as the lay witness statements. Because the ALJ applied the  
27 proper legal standards and the decision is supported by substantial evidence in the record, the  
28 conclusion that Plaintiff is not disabled must be upheld by the Court. *See Sanchez*, 812 F.2d at 510.

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Accordingly, the Court **ORDERS**:

1. The decision of the Commissioner of Social Security is **AFFIRMED**;
2. The Commissioner's motion for summary judgment is **GRANTED**; and
3. The Clerk of Court **IS DIRECTED** to enter judgment in favor of Defendant Nancy A. Berryhill, Acting Commissioner of Social Security, and against Plaintiff Patricia Ann Williamson.

IT IS SO ORDERED.

Dated: March 3, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE