

1 the Honorable Gary S. Austin, United States Magistrate Judge.² (Docs. 12, 17, and 18). Upon a
2 review of the entire record, the Court finds that the Commissioner’s decision is supported by
3 substantial evidence. Accordingly, the Court affirms the agency’s determination to deny benefits
4 and denies Plaintiff’s appeal.

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6 **II. FACTS AND PRIOR PROCEEDINGS**³

7 **A. Background**

8 On March 26, 2012, Plaintiff filed an application SSI, alleging disability beginning
9 January 28, 2000.⁴ AR 11; 328-334. Her applications were denied initially and on
10 reconsideration. AR 231-234; 237-245. Subsequently, Plaintiff requested a hearing before an
11 Administrative Law Judge (“ALJ”). AR 247-249. ALJ Vincent Misenti held a hearing on April
12 22, 2014 (AR 107-144), and issued an order denying benefits on May 28, 2014. AR 11-22.
13 Plaintiff subsequently filed an appeal with the Appeals Council. The appeal was denied,
14 rendering the ALJ’s decision the final decision of the Commissioner. AR 1-5. Plaintiff sought
15 judicial review by commencing the instant action pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).
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17 **B. The Disability Standard**

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

25 ² The parties consented to the jurisdiction of the United States Magistrate Judge. (*See* Docs. 7 and 8).

26 ³ References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

27 ⁴ This is Plaintiff’s third application for SSI benefits. AR 11. She first applied for benefits on July 26, 2006 and
28 subsequently reapplied on April 14, 2009. AR 11; 145-185. After Plaintiff exhausted her administrative remedies,
hearings were held by an ALJ and benefits were denied on each occasion. AR 145-172.

1 only unable to do his previous work, but cannot, considering his age, education, and work
2 experience, engage in any other kind of substantial gainful work which exists in the
3 national economy, regardless of whether such work exists in the immediate area in which
4 he lives, or whether a specific job vacancy exists for him, or whether he would be hired if
he applied for work.

42 U.S.C. § 1382c(a)(3)(B).

5 To achieve uniformity in the decision-making process, the Commissioner has established
6 a sequential five-step process for evaluating a claimant's alleged disability. 20 C.F.R. §
7 416.920(a). The ALJ proceeds through the steps and stops upon reaching a dispositive finding
8 that the claimant is or is not disabled. 20 C.F.R. § 416.920 (a)(4). The ALJ must consider
9 objective medical evidence and opinion testimony. 20 C.F.R. § 416.913.
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11 Specifically, the ALJ is required to determine: (1) whether a claimant engaged in
12 substantial gainful activity during the period of alleged disability; (2) whether the claimant had
13 medically-determinable "severe" impairments; (3) whether these impairments meet or are
14 medically equivalent to one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P,
15 Appendix 1; (4) whether the claimant retained the residual functional capacity ("RFC") to
16 perform his past relevant work; and (5) whether the claimant had the ability to perform other jobs
17 existing in significant numbers at the regional and national level. 20 C.F.R. § 416.920(a)(4).
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19 **C. Summary of the ALJ's Decision and the Issues Presented**

20 Using the Social Security Administration's five-step sequential evaluation process, the
21 ALJ determined that Plaintiff did not meet the disability standard. AR 11-22. More particularly,
22 the ALJ found that Plaintiff had not engaged in substantial gainful activity since March 26, 2012,
23 the application date. AR 14. Further, the ALJ identified fibromyalgia and obesity as severe
24 impairments. AR 14. However, the ALJ found that Plaintiff did not have an impairment or
25 combination of impairments that met or medically equaled one of the listing impairments in 20
26 C.F.R. Part 404 P, Appendix 1. AR 15-16.
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28 The ALJ also determined that Plaintiff had the residual functional capacity ("RFC") to

1 perform light work as defined in 20 CFR 416.967(b) with the following exceptions:

2 [The claimant] can occasionally crawl, crouch, kneel, stoop, balance, and climb ropes
3 and stairs. She should avoid unprotected heights, commercial driving, and climbing
4 ladders, ropes, and scaffolds. She should avoid concentrated exposure to extreme cold or
5 heat. She is capable of working in moderately noisy environments. She should also avoid
6 concentrated exposure to fumes, gases, chemicals and poorly vented areas. The claimant
is limited to simple, routine, and repetitive tasks. She is limited to simple work related
decisions. AR 16.

7 At step four, the ALJ relied on the testimony of a vocational expert and found that
8 Plaintiff was capable of performing her past occupation as a photo detailer as it was actually
9 performed. AR 20. The ALJ also made an alternative finding at step five and determined that
10 Plaintiff was capable of working as a fast food worker and a cafeteria attendant. AR 21.
11 Accordingly, the ALJ found that Plaintiff was not disabled. AR 21.

12 Plaintiff challenges this decision arguing that the ALJ improperly assessed the medical
13 evidence. Specifically, Plaintiff contends that the ALJ failed to properly incorporate her treating
14 physician's limitations that she was unable to stoop, crouch, or bend. As a result, the ALJ
15 erroneously concluded Plaintiff could perform the three jobs listed above. (Docs. 12 and 18). In
16 opposition, Defendant argues that the ALJ's findings are supported by substantial evidence
17 because the ALJ properly assessed all of the medical evidence and devised a RFC that adequately
18 accounted for all of Plaintiff's limitations. (Doc. 17).

21 **III. STANDARD OF REVIEW**

22 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's decision to determine
23 whether (1) it is supported by substantial evidence, and (2) it applies the correct legal standards.
24 See *Carmickle v. Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
25 1071, 1074 (9th Cir. 2007).

26 "Substantial evidence means more than a scintilla but less than a preponderance."
27 *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). It is "relevant evidence which,
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1 considering the record as a whole, a reasonable person might accept as adequate to support a
2 conclusion.” *Id.* Where the evidence is susceptible to more than one rational interpretation, one
3 of which supports the ALJ's decision, the ALJ's conclusion must be upheld.” *Id.*

4 **IV. DISCUSSION**

5 **A. The ALJ Properly Evaluated the Medical Evidence.⁵**

6 Plaintiff argues that the ALJ improperly found that she could perform her past work as a
7 photo detailer, as well as work as a fast food worker and cafeteria attendant because the ALJ
8 implicitly adopted Dr. Watrous’ (her treating physician) limitations that she is precluded from
9 stooping, crouching, and bending but failed to incorporate these into the RFC. Instead, the ALJ
10 found that she could occasionally perform these tasks but did not provide specific and legitimate
11 reasons for rejecting Dr. Watrous’ opinion. Plaintiff contends this error is significant because if
12 the hypothetical submitted to the VE contained Dr. Watrous’ limitations that she was unable to
13 stoop, crouch and bend, Plaintiff would not be able to perform these three jobs, or light work
14 generally. Moreover, if she were limited to sedentary unskilled work, she would be disabled
15 under the Medical Vocational Guideline (“the Grids”) Rule 201.14. Given the above, the ALJ’s
16 disability determination contained legal error and it is not supported by the evidence. Plaintiff
17 urges the Court to credit the evidence in question as true and grant benefits, or alternatively
18 remand for further administrative proceedings. (Docs. 12, pgs. 5-22; Doc. 18, pgs. 4-7).

19 Defendant argues that the ALJ’s analysis was proper because the ALJ considered the medical
20 record in its entirety and carefully crafted a RFC that comported with the weight of the evidence.
21 (Doc.17, pgs.6-14). Specifically, the Defendant asserts that ALJ’s decision should be affirmed
22 because the ALJ’s rationale for rejecting Dr. Watrous’ opinions was specific, legitimate, and
23 supported by substantial evidence. Alternatively, the Commissioner argues that if the Court finds
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28 ⁵The Court has reviewed the entire medical record (AR 381-659) and addresses the relevant portions raised in this appeal below.

1 error, the case should be remanded for further proceedings rather than award benefits. (Doc. 17,
2 pgs. 6-14).

3 **1. Legal Standard**

4 The weight given to medical opinions depends in part on whether they are offered by
5 treating, examining, or non-examining (reviewing) professionals. *Holohan v. Massanari*, 246
6 F.3d 1195, 1201 (9th Cir. 2001); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Ordinarily,
7 more weight is given to the opinion of a treating professional, who has a greater opportunity to
8 know and observe the patient as an individual. *Id.*; *Smolen v. Chater*, 80 F.3d 1273, 1285 (9th
9 Cir. 1996).

10 An ALJ may reject the uncontradicted opinion of a treating or examining medical
11 professional only for “clear and convincing” reasons. *Lester*, 81 F.3d at 831. In contrast, a
12 contradicted opinion of a treating or examining professional may be rejected for “specific and
13 legitimate” reasons. *Lester*, 81 F.3d at 830. While a treating professional’s opinion is generally
14 accorded superior weight, if it is contradicted by an examining professional’s opinion (when
15 supported by different independent clinical findings), the ALJ may resolve the conflict. *Andrews*
16 *v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995), citing *Magallanes v. Bowen*, 881 F.2d 747, 751
17 (9th Cir.1989). The regulations require the ALJ to weigh the contradicted treating physician
18 opinion, *Edlund v. Massanari*, 253 F.3d 1152 (9th Cir. 2001), but the ALJ need not give it any
19 weight if it is conclusory and supported by minimal clinical findings. *Meanel v. Apfel*, 172 F.3d
20 1111, 1113 (9th Cir. 1999) (treating physician's conclusory, minimally supported opinion
21 rejected); *see also Magallanes*, 881 F.2d at 751.

22 **2. Analysis**

23 Here, there were four medical doctors who offered opinions in this case: Dr. Daniel Watrous,
24 M.D., Plaintiff’s treating physician (AR 648-651); Dr. Robert Wagner, M.D., a consultative
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1 examining physician (AR 560-564); and Drs. W. Jackson, M.D. (AR 218-219) and Maria
2 Lagarda, M.D., (AR 195), two non-examining state agency physicians. At issue in this case is
3 whether the ALJ properly rejected Dr. Watrous' opinion with regard to Plaintiff's ability to stoop,
4 crouch, and bend.

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6 A review of the medical reveals that the opinions offered contrasting medical opinions
7 regarding Plaintiff's physical limitations and her ability to work. Dr. Watrous determined that
8 Plaintiff could lift/carry ten pounds rarely and five pounds occasionally; could stand/walk less
9 than one hour per workday; could sit less than one hour per workday; would frequently
10 experience interference with attention and concentration; could not stoop, crouch or bend; would
11 need to lie down for four hours during a workday; would be off task for thirty percent of the
12 workday; and would experience absenteeism at a rate of more than five days per month. AR 648-
13 651. On the other hand, Dr. Wagner concluded that Plaintiff could stand and/or walk for a total
14 of approximately six hours; occasionally lift and/or carry objects weighing up to fifty pounds,
15 with frequent lifting or carrying of objects weighing up to twenty-five pounds; use arms and
16 hands to grasp, hold, and turn objects; frequently bend or stoop; and be on her feet for most of the
17 workday. AR 564. Dr. Jackson, M.D. reviewed the record and fell in the middle of the other two
18 doctors, finding that Plaintiff could stand and/or walk for a total of approximately six hours in an
19 eight-hour workday; occasionally crawl, crouch, kneel, stoop, balance, and climb; use her arms
20 and hands to grasp, hold, and turn objects; lift and/or carry up to ten pounds frequently and
21 twenty pounds occasionally; and push and/or pull arm-hand or leg-foot controls, among other
22 activities. AR 218-19. Dr. Lagarda, M.D., agreed with Dr. Wagner's functional assessment. AR
23 195.

24 Plaintiff argues that the ALJ's decision is in error because if he adopted Dr. Watrous'
25 limitations that Plaintiff is unable to balance, stoop, crouch or bend, he failed to include the
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1 limitation in the RFC which resulted in the VE providing testimony that Plaintiff could perform
2 work as a photo detailer, a fast food worker, or a cafeteria attendant.⁶ Alternatively, Plaintiff
3 contends that if the ALJ rejected these limitations, he failed to provide specific and legitimate
4 reasons for doing so. (Doc. 12, pgs. 6-8).

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6 After reviewing the ALJ's decision, the Court rejects the Plaintiff's arguments. The ALJ
7 provided a very detailed summary of all of the doctor's opinions. After evaluating all evidence,
8 the ALJ adopted Dr. Watrous' stooping, crouching, and bending limitations, but not to the extent
9 the doctor and Plaintiff alleges. Instead, the ALJ adopted Dr. Jackson's opinion that Plaintiff
10 could occasionally perform those activities. The ALJ did so by noting that Dr. Jackson found
11 Plaintiff could perform less than a full range of light work and by giving that opinion
12 considerable weight. AR 18. ("Dr. Jackson determined ... that the claimant could occasionally
13 crawl, crouch, kneel, stoop, balance, and climb. Dr. Jackson's determination receives more
14 weight that Dr. Legarda's opinion ...). When discussing Dr. Watrous' findings, the ALJ found
15 that he would give the opinion only some weight. AR 18. The ALJ then gave a detailed analysis
16 of Dr. Watrous' findings. He specifically stated that he gave more weight to Dr. Jackson's
17 opinion than to Dr. Watrous' findings because Dr. Watrous relied extensively on Plaintiff's
18 subjective complaints without objective evidence (AR19), and because Plaintiff's daily activities
19 which included personal care needs, cooking, cleaning, riding a motorcycle, shopping and
20 walking were not consistent with the limitations Dr. Watrous identified. AR 17; 19; 89-90; 549-
21 651; 616. These are valid bases to reject a doctor's opinion. *Magallanes v. Bowen*, 881 F.2d 747,
22 751 (9th Cir. 1989) (A lack of supporting clinical findings is a valid reason for rejecting a treating
23 physician's opinion); *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) citing *Morgan v.*

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27 ⁶ Plaintiff also argues that even if she could occasionally stoop and crouch, she would still be precluded from
28 performing her past work as a photo detailer because that job requires stooping and crouching eight hours a day.
However, since the ALJ found that Plaintiff could work in two other jobs at step five, this error would not be a
separate basis for reversal. (Doc. 12, pg. 7, n. 2)

1 CSS, 169 F. 3d 595, 600-602 (9th Cir. 1999) (conflict between a medical opinion and daily
2 activities “may justify rejecting a treating provider’s opinion”). Therefore, while the ALJ stated
3 that he credited Dr. Watrous’ balance, stooping, couching, and bending limitations, it is also clear
4 that the ALJ adopted Dr. Jackson’s limitation that Plaintiff could perform these tasks only
5 occasionally rather than not at all. AR 16; 18; 19; 219; 649.

7 Plaintiff correctly argues that if the ALJ did not adopt Dr. Watrous’ limitations in full, he
8 was required to provide specific and legitimate reasons for doing so. (Doc. 12, pg. 7; Doc. 18, pg.
9 4). She cites to *Dale v. Colvin*, 823 F. 3d 941, 945 (9th Cir. 2016) for the premise that an ALJ’s
10 reasons for rejecting a discrete portion of a source’s opinion does not serve as a basis to reject
11 other portions of the opinion. She contends that because the ALJ’s reasons for rejecting these
12 findings are located in another section of the order addressing other limitations, they are not valid.
13 The Court finds that *Dale* is not controlling here. First, unlike *Dale*, the ALJ in this instance was
14 comparing several different doctors’ opinions regarding Plaintiff’s physical impairments and
15 clearly gave more weight to Dr. Jackson’s opinion than to Dr. Watrous’ findings. AR 18;19. In
16 doing so, he stated that he “credits limitations to balance, stooping, crouching, and bending,”
17 which he did by adopting Dr. Jackson’s limitations performing these activities occasionally. *Id.*
18 He did not indicate that he was adopting Dr. Watrous’ limitations in those areas in full as Plaintiff
19 contends.
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22 Additionally, while the ALJ divided Dr. Watrous’ opinion into different sections when
23 rejecting various limitations, he also noted inconsistencies between the Plaintiff’s complaints and
24 the objective evidence in the record numerous times throughout the order and clearly chose to
25 reject the majority of Dr. Watrous’ findings. AR 17; 18; 19. For example, he found Plaintiff was
26 not credible by referencing Dr. Wagner’s observations that Plaintiff appeared to be exaggerating
27 her symptoms especially with regard to needing a cane, bending, and walking. AR 17; 561-564.
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1 He also noted that Plaintiff's complaints of irritable bowel syndrome and fingering limitations
2 were not supported by Dr. Watrous' treatment notes, further discrediting his opinion. *Thomas v.*
3 *Barnhart*, 278 F.3d 948, 957 (9th Cir. 2002) (An ALJ may also reject the treating physician's
4 opinion because it was based on the claimant's discredited subjective complaints); AR 17.

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6 Finally, at the conclusion of the evaluation of the medical evidence, the ALJ made it clear
7 that he considered the entire record and found that Plaintiff's subjective statements and
8 allegations were not supported by the weight of the medical evidence. AR 20. In doing so, the
9 ALJ considered the evidentiary record as a whole and carefully crafted a RFC that incorporated
10 the limitations he found best comported with the weight of the evidence. See 20 C.F.R. §
11 416.946(c); *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) ("It is clear that it is the
12 responsibility of the ALJ, not the claimant's physician, to determine residual functional
13 capacity."). Given all of the above, the ALJ provided specific, legitimate reasons for rejecting Dr.
14 Watrous' opinion that Plaintiff was completely unable to stoop, crouch and bend, but that she
15 could do so occasionally.
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17 **V. CONCLUSION**

18 Based on the foregoing, the Court finds that the ALJ's decision is supported by substantial
19 evidence and is based on proper legal standards. Accordingly, this Court DENIES Plaintiff's
20 appeal from the administrative decision of the Commissioner of Social Security. The Clerk of
21 this Court is DIRECTED to enter judgment in favor Nancy A. Berryhill, Commissioner of Social
22 Security and against Plaintiff Jean R. Oliveras, and close this action.
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25 IT IS SO ORDERED.

26 Dated: February 13, 2017

/s/ Gary S. Austin
27 UNITED STATES MAGISTRATE JUDGE
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