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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAROLETTA D. PARHAN,

Plaintiff,

No. 2:08-cv-02770 KJN

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

ORDER

Defendant.

_____/

Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying plaintiff’s applications under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401 et seq. and 1381 et seq. (the “Act”).¹ In her motion for summary judgment, plaintiff contends that the Administrative Law Judge (“ALJ”) erred by:

- (1) rejecting the opinions of plaintiff’s treating psychiatrist and the Social Security consultative examiner without a legitimate basis for doing so; (2) failing to properly evaluate and credit plaintiff’s third party witness statements; (3) failing to properly evaluate the severity of plaintiff’s

¹ This case was referred to the undersigned pursuant to Eastern District of California Local Rule 302(c)(15) and 28 U.S.C. § 636(c), and both parties have voluntarily consented to proceed before a United States Magistrate Judge, 28 U.S.C. § 636(c)(1); Fed. R. Civ. P. 73; Local Rule 301. (Dkt. Nos. 7, 9.) This case was reassigned to the undersigned by an order entered February 9, 2010. (Dkt. No. 24.)

1 headaches and vertigo; and (4) failing to properly assess plaintiff's residual functional capacity
2 ("RFC") and thus posing a legally inadequate hypothetical to the vocational expert. (Dkt. No. 19
3 at 4.) The Commissioner filed a cross-motion for summary judgment. (Dkt. No. 23.)

4 After careful consideration of the entire record, the arguments presented, and for
5 the reasons stated below, the court denies plaintiff's motion for summary judgment and grants
6 the Commissioner's cross-motion for summary judgment.

7 I. BACKGROUND

8 A. Procedural Background

9 On February 17, 2005, plaintiff filed an application for social security disability
10 and supplemental security income, alleging disability beginning on March 31, 2003
11 (Administrative Transcript ("AT") 14, 192-98.) The Social Security Administration denied
12 plaintiff's application initially and upon reconsideration. (AT 174-79, 182-86.) Plaintiff filed a
13 timely request for a hearing, and the ALJ conducted a hearing on April 20, 2007 (AT 14.)
14 Plaintiff, who was represented by counsel, testified at the hearing. (AT 60-95.) Additionally, an
15 impartial medical expert and impartial vocational expert testified at the hearing. (AT 14.)

16 In a decision dated June 29, 2007, the ALJ denied plaintiff's application. (AT 45-
17 59.) Plaintiff filed an appeal with the Appeals Council for the Social Security Administration.
18 The Appeals Council, by order dated October 5, 2007, vacated the ALJ's hearing decision and
19 remanded the case. In its remand order, the Appeals Council directed the ALJ to: (1) give
20 further consideration to the treating source opinion and nonexamining source opinion and explain
21 the weight given to such opinions; (2) make a finding regarding the severity of the claimant's
22 alleged headaches and vertigo; (3) obtain additional evidence concerning the claimant's alleged
23 mental impairments; (4) address a certain third party statement; and (5) obtain evidence from a
24 vocational expert to clarify the effect of the assessed limitations on the claimant's occupational
25 base. (AT 14.)

26 The hearing on remand was held on May 2, 2008. (AT 14-29.) Plaintiff, who was

1 represented by an attorney, testified at the hearing. (AT 96-159.) The ALJ issued a decision on
2 July 21, 2008, denying plaintiff benefits because she was not under a disability within the
3 meaning of the Social Security Act.² (AT 11-29.) Plaintiff filed a second appeal. However, the
4 Appeals Council denied review, rendering the ALJ's July 21, 2008 decision the final decision of
5 the Commissioner of Social Security. (AT 6-8.) Plaintiff herein seeks judicial review pursuant
6 to 42 U.S.C. § 405(g).

7 B. Summary of Relevant Medical History and Evidence

8 The facts of the case are set forth in detail in the transcript of proceedings and are
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10 ² Disability Insurance Benefits are paid to disabled persons who have contributed to the
11 Social Security program, 42 U.S.C. §§ 401 et seq. Generally speaking, SSI is paid to disabled
12 persons with low income. 42 U.S.C. §§ 1382 et seq. Under both benefit structures, the term
13 "disability" is defined, in part, as an "inability to engage in any substantial gainful activity" due
14 to "any medically determinable physical or mental impairment which can be expected to result in
15 death or which has lasted or can be expected to last for a continuous period of not less than
16 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A five-step sequential evaluation
17 governs eligibility for benefits. See 20 C.F.R. §§ 404.1520, 404.1571-76, 416.920, 416.971-76;
18 see also Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987). The Ninth Circuit Court of Appeals
19 has summarized the sequential evaluation as follows:

16 Step one: Is the claimant engaging in substantial gainful
17 activity? If so, the claimant is found not disabled. If not, proceed
18 to step two.

17 Step two: Does the claimant have a "severe" impairment?
18 If so, proceed to step three. If not, then a finding of not disabled is
19 appropriate.

18 Step three: Does the claimant's impairment or combination
19 of impairments meet or equal an impairment listed in 20 C.F.R., Pt.
20 404, Subpt. P, App.1? If so, the claimant is automatically
21 determined disabled. If not, proceed to step four.

20 Step four: Is the claimant capable of performing his past
21 work? If so, the claimant is not disabled. If not, proceed to step
22 five.

21 Step five: Does the claimant have the residual functional
22 capacity to perform any other work? If so, the claimant is not
23 disabled. If not, the claimant is disabled.

24 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995).

25 The claimant bears the burden of proof in the first four steps of the sequential evaluation
26 process. Bowen, 482 U.S. at 146 n.5. The Commissioner bears the burden if the sequential
evaluation process proceeds to step five. Id.

1 briefly summarized here.

2 Plaintiff claims disability on the basis of dizziness, headaches, anxiety,
3 depression, panic attacks, nerve damage in elbows, and neck and back pain. Plaintiff frequently
4 visited emergency rooms for treatment of her symptoms. A November 8, 2006 emergency room
5 report summarized several of plaintiff's emergency room visits as follows:

6 This is a 32-year old African-American female seen for the third time
7 in three days for a different complaint each day. She was seen on
8 11/05/2006, at that time for an altered level of consciousness. Seen
9 again on 11/07/2006 for headache and on today's date, 11/08/2006 is
10 seen for abdominal pain and shortness of breath. The patient was
11 actually seen in conjunction with the resident on entering through the
12 emergency department family practice resident. Her MPI was
13 evaluated and actually she has a cluster of being seen in the past on
14 multiple occasions. For instance, she was seen for three days in
15 November of 2006, seen within three days of December 30, 2005. A
16 similar presentation in October, 2003. The cluster of emergency room
17 visits seems to run in 2-3's, but nevertheless she currently presents for
18 a four day history of abdominal pain, headache which she was seen for
19 on the day prior to presentation has resolved. On exam she is quite
20 tremulous, has difficulty swallowing and "feels as though something"
21 is in her throat.

22 (AT 770.)

23 On June 20, 2005, subsequent to her application for disability benefits, plaintiff
24 underwent a consultative psychological examination administered by Dr. Janice Nakagawa,
25 Ph.D. (AT 487-90.) At that time, plaintiff was a 31 year old female. She was living with her
26 two children, ages 3 and 7. (AT 488.) Plaintiff told Dr. Nakagawa that she had difficulty being
around people because of bad anxiety and vertigo. (AT 487.) She also complained of headaches
and sleep problems. (Id.)

Dr. Nakagawa found plaintiff to be unreliable, tending to emphasize her
limitations and difficulties. (Id.) Dr. Nakagawa stated that plaintiff "put forth very inconsistent
effort on all testing. Impression was she was attempting to present in the worst possible light for

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1 secondary gain, i.e. malinger.” (AT 489.) Because malingering³ was suspected, Dr. Nakagawa
2 administered the Rey 15-Item Memory Test, the results of which “clearly indicated malingering.”
3 (Id.) In sum, Dr. Nakagawa stated: “She lives alone with her two young children and is able to
4 care for them. She may have some mental health issues, but given the test data in the present
5 assessment, the only diagnosis that could be presently offered is malingering for secondary gain.”
6 (AT 490.)

7 Plaintiff also underwent a comprehensive orthopedic examination on July 29,
8 2005. (AT 491.) Plaintiff complained of neck pain, low back pain, headaches, anxiety and
9 depression. (Id.) Dr. Ethelynda Jaojoco opined that plaintiff seemed to be suffering debilitating
10 headaches and vertigo. Dr. Jaojoco also stated that plaintiff was able to stand and walk less than
11 two hours and sit for less than six hours, and that plaintiff may require an assistive device such as
12 a cane. (AT 495.) Dr. Jaojoco further opined that “[h]opefully the etiology of her problem will
13 be determined and proper treatment initiated. With resolution of the vertigo and headaches she
14 will likely have no restrictions.” (Id.) Dr. Jaojoco concluded that plaintiff was able to lift and/or
15 carry less than 10 pounds, and has postural limitations of no bending, stooping, crouching,
16 climbing, kneeling, balancing, crawling and squatting. (Id.)

17 Records also state that plaintiff had been seen by Dr. Henry Ton, M.D., a
18 psychiatrist, for weekly visits since December 2003. (AT 868.) Plaintiff was prescribed a variety
19 of medications for her claimed mental health problems at different times, including Lexapro,
20 Atavan, Cymbalta, Elavil and Prozac. (See AT 510.) Plaintiff sometimes attended a mental
21 health group focused on panic attacks. Plaintiff’s Sacramento County Mental Health treatment
22 notes report that plaintiff “remains significantly impaired,” and that although her medications
23 were somewhat helpful, her treatment records stated that she would benefit from more

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25 ³ “Malingering is recurrent intentional feigning of physical and mental symptoms
26 motivated by an external incentive (e.g., feigning illness to avoid work or military duty, evade
criminal prosecution, or obtain financial compensation or drugs for abuse).” The Merck Manual
of Diagnosis and Therapy 1737 (Merck Research Labs., 18th ed. 2006).

1 involvement in the panic attack group. (AT 628.)

2 In February 2007, Dr. Ton issued a treating physician's RFC report which stated
3 that plaintiff suffers from depressed mood, hopelessness, anxiety including fears of leaving her
4 home, and obsessive compulsive hand washing and cleaning. (AT 868.) He diagnosed plaintiff
5 with panic disorder, obsessive compulsive disorder and major depressive disorder. (Id.) He
6 stated that the plaintiff was not capable of traveling alone, and that her prognosis was fair to
7 guarded. (AT 869.) He opined that plaintiff's daily activities were severely restricted because of
8 her condition. (AT 870.)

9 During her May 2, 2008, social security disability hearing, plaintiff testified that
10 she had previously worked in a daycare and as a cashier at Kmart and Big Lots. She stated that
11 she left the Big Lots job because of her anxiety and had not worked since that date. (AT 102.)
12 Plaintiff testified that she did not vacuum, mop, clean the bathroom and rarely did laundry at
13 home. (AT 104.) She stated that her son's father cooked meals and went grocery shopping. (Id.)
14 She testified that her children's godmother helped to get the kids ready for school and took them
15 to and from school. (AT 110.) Plaintiff testified that the children's godmother also sometimes
16 prepared their meals, cleaned the house and helped plaintiff to shower. (Id.) Plaintiff testified
17 that she did not leave the house to go to the movies, church, her children's school events, to play
18 sports, volunteer or exercise. (AT 105-08.) Plaintiff explained that there were days when she did
19 not go out at all, even when she needed to go somewhere, because "I just feel safer in the house."
20 (AT 115.)

21 Dr. Sidney Walter, medical expert, then testified. (AT 123.) He stated that
22 plaintiff had the symptoms of anxiety hysteria, which is linked to a somatoform⁴ disorder. He
23 testified that plaintiff also had a depressive syndrome, and that both of these diagnoses caused

24 ⁴ "Somatoform disorders are characterized by physical symptoms or by perceived defects
25 in appearance. Development of the symptoms or perceived defects is unconscious and non-
26 volitional." The Merck Manual of Diagnosis and Therapy 1736 (Merck Research Labs., 18th ed.
2006).

1 some impairment in her overall functioning. He concluded, however, that the severity of her
2 symptoms did not meet the Social Security’s listing criteria level set forth in 20 C.F.R., Pt. 404,
3 Subpt. P, App.1. (AT 123.) Dr. Walter concluded “[o]verall, I feel she does have symptoms, but
4 not so restrictive that she can not function . . .” (AT 124.)

5 The ALJ next asked the VE the following hypothetical:

6 Mental limitations are based on Dr. Walter’s testimony. The
7 claimant can perform simple, unskilled work. No work
8 working in unison with others as a team. Dr. Walter testified
9 she could work in the presence of fellow employees, the
10 presence of the public, but no, no work as a team with the other
11 employees. . . . Okay, the physical limitations, no heights,
12 dangerous machinery, ladders, etcetera, due to spells of
13 dizziness, those are to be my, my physical limitations, but why
14 don’t you restrict yourself to light jobs, identify light jobs that
15 fit, fit that RFC.

16 (AT 134-135.) The VE responded that plaintiff could work as a maid or a car washer. He also
17 testified upon further examination by the ALJ and plaintiff’s attorney that she would be able to
18 perform simple assembly jobs, such as a fishing reel assembler, which was unskilled and
19 sedentary in nature, or perhaps as a surveillance system monitor. (AT 137-55.)

20 C. Summary of the ALJ’s Findings

21 The ALJ conducted the required five-step evaluation and concluded that plaintiff
22 was not disabled within the meaning of the Act. At step one, the ALJ concluded that plaintiff
23 met the insured status requirements of the Act through March 31, 2005. (AT 28.) At step two,
24 the ALJ concluded that plaintiff had the severe impairments of a major depressive disorder, a
25 panic disorder and an obsessive compulsive disorder. (Id.) At step three, he determined that
26 plaintiff’s impairments did not meet or medically equal one of the impairments listed in the
applicable regulations. (Id.) The ALJ further determined that plaintiff had the RFC to perform
unskilled, entry-level work involving simple, routine tasks without frequent public contact. In
consideration of the claimant’s history of treatment for headaches and dizziness, and plaintiff’s
continuing complaints of headaches and dizziness, the ALJ found that she was prevented from

1 working at unprotected heights or with dangerous machinery. (Id.) The ALJ found, at step four,
2 that plaintiff was unable to perform any past relevant work. (AT 26.) Finally, the ALJ found, at
3 step five and in reliance on plaintiff’s RFC, that there are jobs that exist in significant numbers in
4 the national economy that the claimant could perform, considering her impairments, limitations,
5 age, education and work experience. (AT 27.) The Appeals Council rejected review of
6 plaintiff’s case after the ALJ’s decision on remand because it found no reason under its rules for
7 review. (AT 6.)

8 II. ISSUES PRESENTED

9 Plaintiff contends that the ALJ committed four principal errors in reviewing
10 plaintiff’s claim. (Dkt. No. 19 at 27.) First, plaintiff argues that the ALJ erred by rejecting the
11 opinions of Dr. Ton, plaintiff’s treating psychiatrist, and the opinion of Dr. Jaojoco, the Social
12 Security consultative examiner without a legitimate basis for doing so. (Id.) Second, she argues
13 that the ALJ failed to properly evaluate and credit plaintiff’s third party witness statement. (Id.)
14 Third, she contends that the ALJ failed to properly evaluate the severity of plaintiff’s headaches
15 and vertigo. (Id.) Fourth, plaintiff argues that the ALJ failed to properly assess plaintiff’s RFC
16 and correspondingly pose a legally adequate hypothetical to the vocational expert. (Id.)

17 III. STANDARDS OF REVIEW

18 The court reviews the Commissioner’s decision to determine whether it is: (1) free
19 of legal error; and (2) supported by substantial evidence in the record as a whole. Bruce v.
20 Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009); accord Vernoff v. Astrue, 568 F.3d 1102, 1105 (9th
21 Cir. 2009). This standard of review has been described as “highly deferential.” Valentine v.
22 Comm’r of Soc. Sec. Admin., 574 F.3d 685, 690 (9th Cir. 2009). “Substantial evidence means
23 more than a mere scintilla but less than a preponderance; it is such relevant evidence as a
24 reasonable mind might accept as adequate to support a conclusion.” Bray v. Comm’r of Soc.
25 Sec. Admin., 554 F.3d 1219, 1222 (9th Cir. 2009) (quoting Andrews v. Shalala, 53 F.3d 1035,
26 1039 (9th Cir. 1995)); accord Valentine, 574 F.3d at 690 (citing Desrosiers v. Sec’y of Health &

1 Human Servs., 846 F.2d 573, 576 (9th Cir. 1988)). “The ALJ is responsible for determining
2 credibility, resolving conflicts in medical testimony, and for resolving ambiguities.” Andrews,
3 53 F.3d at 1039; see also Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008) (“[T]he
4 ALJ is the final arbiter with respect to resolving ambiguities in the medical evidence.”).

5 Findings of fact that are supported by substantial evidence are conclusive. 42
6 U.S.C. § 405(g); see also McCarthy v. Apfel, 221 F.3d 1119, 1125 (9th Cir. 2000). “Where the
7 evidence as a whole can support either a grant or a denial, [the court] may not substitute [its]
8 judgment for the ALJ’s.” Bray, 554 F.3d at 1222 (citing Massachi v. Astrue, 486 F.3d 1149,
9 1152 (9th Cir. 2007)); see also Ryan v. Comm’r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir.
10 2008) (“‘Where evidence is susceptible to more than one rational interpretation,’ the ALJ’s
11 decision should be upheld.”) (quoting Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)).
12 However, the court “must consider the entire record as a whole and may not affirm simply by
13 isolating a ‘specific quantum of supporting evidence.’” Ryan, 528 F.3d at 1198 (quoting
14 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)); accord Lingenfelter v. Astrue,
15 504 F.3d 1028, 1035 (9th Cir. 2007).

16 IV. ANALYSIS

17 A. The ALJ Provided Legally Sufficient Reasons For His Treatment of Physician 18 Testimony

19 Plaintiff’s initial contention is that the ALJ erred by rejecting the opinions of
20 certain treating and examining physicians and psychologists without legally adequate reasons for
21 doing so. (Dkt. No. 19 at 28.) More specifically, plaintiff contends that the ALJ failed to follow
22 the Appeals’ Council’s instruction that he “give further consideration” to Dr. Ton’s opinion that
23 plaintiff’s daily activities were severely impaired. (AT 164.)

24 The medical opinions of three types of medical sources are recognized in social
25 security cases: “(1) those who treat the claimant (treating physicians); (2) those who examine but
26 do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the

1 claimant (nonexamining physicians).” Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996).
2 Generally, a treating physician’s opinion should be accorded more weight than opinions of
3 doctors who did not treat the claimant, and an examining physician’s opinion is entitled to
4 greater weight than a non-examining physician’s opinion. Id. Where a treating or examining
5 physician’s opinion is uncontradicted by another doctor, the Commissioner must provide “clear
6 and convincing” reasons for failing to assign controlling weight to the treating physician’s
7 ultimate conclusions. Id. If the treating or examining doctor’s medical opinion is contradicted
8 by another doctor, the Commissioner must provide “specific and legitimate” reasons for rejecting
9 that medical opinion, and those reasons must be supported by substantial evidence in the record.
10 Id. at 830-31; accord Valentine, 574 F.3d at 692. While a treating professional’s opinion
11 generally is accorded superior weight, if it is contradicted by a supported examining
12 professional’s opinion (supported by different independent clinical findings), the ALJ may
13 resolve the conflict. Andrews, 53 F.3d at 1041 (citing Magallanes v. Bowen, 881 F.2d 747, 751
14 (9th Cir. 1989)). In any event, the ALJ need not give weight to conclusory opinions supported by
15 minimal clinical findings. Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999) (treating
16 physician’s conclusory, minimally supported opinion rejected); see also Magallanes, 881 F.2d at
17 751.

18 An ALJ may satisfy the burden of providing those “specific and legitimate
19 reasons” by “setting out a detailed and thorough summary of the facts and conflicting clinical
20 evidence, stating his interpretation thereof, and making findings.” Orn v. Astrue, 495 F.3d 625,
21 632 (9th Cir. 2007) (“The ALJ must do more than offer his conclusions. He must set forth his
22 own interpretations and explain why they, rather than the doctors’, are correct.”). This the ALJ
23 has done in this case.

24 Upon remand, the ALJ concluded that plaintiff was “moderately impaired in her
25 ability to function from a mental standpoint,” and noted that this finding was “essentially
26 supported by Dr. Ton’s medical source statement which indicates that the claimant is moderately

1 impaired from a mental standpoint. As such, Dr. Ton’s opinion is accorded substantial weight as
2 it is supported by the objective medical evidence of record.” (AT 24.) Dr. Ton’s report that
3 plaintiff’s daily activities were severely restricted is contradicted by other physician’s reports,
4 and thus the Commissioner was legally bound to provide specific and legitimate reasons for
5 failing to assign controlling weight to this conclusion.

6 In reviewing the ALJ’s analysis, the court finds that the ALJ provided plaintiff
7 with specific and legitimate reasons. He set out a very detailed and thorough summary of the
8 facts and conflicting evidence. He recognized the medical expert’s disagreement with Dr. Ton’s
9 opinion that plaintiff was severely impaired in her ability to function. (AT 22.) The ALJ also
10 recognized, inter alia, that Dr. Ton assessed plaintiff with a Global Assessment of Functioning
11 (“GAF”) of 60, which is indicative of only moderate mental limitations. (AT 24.)

12 The ALJ examined the plaintiff’s medical records. He noted that plaintiff’s
13 mental health records indicated that she was being treated with medication which helped control
14 her symptoms, and that Dr. Ton noted that those medications were helpful. (AT 24.) The ALJ
15 referenced plaintiff’s treating psychiatrist’s comments that plaintiff would benefit from further
16 involvement in a panic therapy group. (*Id.*) The ALJ further noted that claimant stated at one
17 point that she cared for her two children, bathed them, got them ready for school, made breakfast,
18 read, shopped and paid bills. (AT 24.)

19 In sum, the ALJ provided a lengthy factual summary followed by his view of the
20 evidence of record. Moreover, the ALJ provided numerous specific and legitimate examples of
21 plaintiff’s daily functioning which supported his rejection of Dr. Ton’s extreme RFC assessment.
22 The court must uphold the ALJ’s decision where the evidence is susceptible to more than one
23 rational interpretation. Magallanes, 881 F.2d at 750. The ALJ weighed the evidence in the
24 record and found that plaintiff was not disabled. Although plaintiff contends that the ALJ took
25 an unnecessarily “rosy review” of plaintiff’s mental health records, the ALJ’s finding is a rational
26 interpretation of the evidence. See Tommasetti, 533 F.3d 1041-42 (“[T]he ALJ is the final

1 arbiter with respect to resolving ambiguities in the medical evidence.”) (citing Andrews, 53 F.3d
2 at 1039-40).

3 The ALJ’s handling of Dr. Jaojoco’s consultative examination opinion, however,
4 requires additional reflection. Dr. E. Jaojoco, M.D., performed an orthopedic evaluation of
5 plaintiff in October 2005. (AT 491-95.) Plaintiff reported neck pain, low back pain, tingling in
6 both hands, headaches, anxiety and depression. The ALJ recognized and initially addressed Dr.
7 Jaojoco’s findings as follows:

8 [Dr. Jaojoco] noted that an MRI of the cervical spine dated
9 February 24, 2006 showed no significant disc protrusion, stenosis,
10 or spinal cord abnormalities. An MRI of the brain in January 2005
11 had also been unremarkable. The claimant was diagnosed [by Dr.
12 Jaojoco] with headaches and vertigo of unclear etiology; low back
13 pain likely secondary to a recent lumbar puncture; vertigo, rule out
14 possible vestibular problems; an anxiety disorder; depression; and
15 bilateral cubital tunnel syndrome. The examiner opined that the
16 claimant is able to stand and walk less than two hours and sit for
17 less than six hours. She may require an assistive device such as a
18 cane in order to steady herself. She is able to lift and/or carry less
19 than ten pounds. She has postural limitation of no bending,
20 stooping, crouching, climbing, kneeling, balancing, crawling and
21 squatting. She has no manipulative restrictions. She has
22 environmental restrictions of no working at heights and has
23 limitations with driving currently because of the headaches and
24 vertigo. With resolution of the vertigo and headaches, she will
25 likely have no restrictions.

18 (AT 18.)

19 Plaintiff argues that the ALJ went on to improperly reject “the uncontradicted
20 examining opinion of Dr. Jaojoco.” (Dkt. No. 19 at 31.) This is not an accurate characterization
21 of the ALJ’s ruling. The ALJ found only that he did not “credit the *functional limitations*”
22 assessed by consultative examiner Doctor Jaojoco.

23 The ALJ made the reasoning behind this failure to credit clearly apparent in his
24 ruling:

25 [Dr. Jaojoco’s] suggestions that the claimant has significant
26 functional limitations can be given no evidentiary weight, as he
provided no explanation or basis or finding to support any

1 exertional limitations. He noted no musculoskeletal findings. He
2 appears to be repeating the claimant's complaints, as there are no
3 significant clinical findings in his report or other evidence in the
record to support such restrictions, and the findings are also
reduced by Doctor Nakagawa's findings of claimant malingering.

4 As noted previously, multiple studies were unremarkable.
5 Although there was some suggestion in the treating record that the
6 claimant might have a demyelinating disease, neurological
7 evaluations have show[n] no evidence of multiple sclerosis. CT
8 scans of the brain in September 2003 and December 15, 2004 were
9 negative. Further, in February 2005, Doctor Au, an examining
10 neurologist, concluded that the claimant did not have multiple
11 sclerosis. Significantly, the claimant reported that Meclizine helps
12 her feeling of lightheadedness and dizziness. In December 2006,
13 an MRI scan of the brain showed scattered nonenhancing white
14 matter lesions, which were nonspecific. An MRI of the cervical
15 spine on February 24, 2005 revealed no significant abnormality.
16 An MRI scan of the brain in January 2005 was unremarkable. A
17 thyroid ultrasound in January 2006 showed the thyroid gland was
18 in the upper limits of normal in size, with no focal mass lesion
19 seen. EEG studies in June 2005 and January 2006 were normal. In
20 addition, a Visual Evoked Response study on June 13, 2005,
21 showed no evidence of a visual pathway abnormality on the left or
22 right. Another CT of the brain on November 7, 2006 was negative.
23 Further, in November 2006, an examining neurologist noted that
24 her neurological examination did not reveal any focal
25 abnormalities.

26 Therefore, as directed by the Appeals Council, the undersigned
specifically finds that the claimant's complaints of dizziness and
headaches do not constitute severe impairments. They do not
significantly affect her ability to work.

(AT 20-21.)

Plaintiff contends generally, though, that these articulated reasons do not meet the
"clear and convincing" test for rejecting the uncontradicted opinion of a treating or examining
physician. This court disagrees. The ALJ supported his result with clear and convincing
evidence. He stated that Dr. Jaojoco was not a treating source and that his examination was
limited to a one-time examination that conflicted with treating source records. (AT 20.) He also
recognized that although Dr. Jaojoco indicated certain functional restrictions, that those
restrictions were not supported by the other evidence of record.

The ALJ recognized the plaintiff's history of treatment for headaches and

1 dizziness, and her continuing complaints regarding those ailments. (AT 20.) He found that she
2 would be prevented from working at heights or with dangerous machinery. (Id.) Under these
3 circumstances, the district court will not second-guess the well-reasoned determination of the
4 ALJ with regard to his findings on the credibility or strength of the medical testimony offered in
5 light of the depth of analysis presented by the ALJ. See Allen v. Heckler, 749 F.2d 577, 580
6 (1984). Therefore, no legal error is presented.

7 B. The ALJ Appropriately Evaluated The Testimony Ms. Johnson

8 Plaintiff next contends that the ALJ failed to properly evaluate the third party
9 report of Ms. Timesha C. Johnson, Ms. Parhan’s children’s godmother. Plaintiff correctly notes
10 that in determining whether a claimant is disabled, an ALJ must consider lay witness testimony
11 concerning a claimant’s ability to work. Stout v. Comm’r, 454 F.3d 1050, 1053 (9th Cir. 2006).
12 The ALJ specifically considered Ms. Johnson’s statement. (AT 24-25.) He recognized Ms.
13 Johnson’s testimony that she helped plaintiff with her chores and children, but found that Ms.
14 Johnson’s report tended toward the dramatic. (AT 24.) He stated that “[s]he repeatedly
15 described the claimant’s need to ‘gather her strength’ to do such things as shower and perform
16 chores.” (Id.) He weighed the various portions of Ms. Johnson’s testimony, recognizing on one
17 hand that Ms. Johnson stated that plaintiff had no problems with her personal care, and on the
18 other that she would help make sure the plaintiff did not fall because standing too long caused
19 dizziness. (Id.) The ALJ noted that Ms. Johnson was frequently “only repeating the claimant’s
20 subjective complaints because she was not in a position to ‘feel’ for the claimant.” Hence, the
21 ALJ accorded minimal weight to Ms. Johnson’s lay witness statement because it “only
22 demonstrates that she supports/enables the claimant to the point of repeating her dramatic and
23 exaggerative subjective complaints.” (AT 25.)

24 The ALJ satisfied the Ninth Circuit’s requirements for evaluating lay witness
25 testimony. The ALJ (1) considered the testimony; (2) addressed and commented on the
26 testimony; and (3) provided specific reasons for his treatment of that testimony that are germane

1 to Ms. Johnson. See Stout v. Comm’r, 454 F.3d 1050, 1053 (9th Cir. 2006); Bruce v. Astrue,
2 557 F.3d 1113, 1115 (9th Cir. 2009.) The ALJ properly resolved conflicts in the significant
3 evidence, and after reviewing the opinion of the consultative examiners, other doctor’s reports,
4 the witness testimony at issue, and other evidence of record, determined that plaintiff was not
5 entitled to benefits. The ALJ’s findings are entitled to deference where, as here, they are
6 sufficiently specific to allow a reviewing court to conclude that the adjudicator analyzed the lay
7 witness testimony on permissible grounds and did not arbitrarily discredit Ms. Johnson’s
8 testimony. See Bunnell v. Sullivan, 947 F.2d 341, 345-46 (9th Cir. 1991).

9 C. The ALJ Properly Evaluated Plaintiff’s Headaches And Vertigo

10 Plaintiff next contends that the ALJ erroneously failed to include plaintiff’s
11 headaches and vertigo as severe impairments at step two of the sequential evaluation process
12 pursuant to 20 C.F.R. § 404.1520(a). (Dkt. No. 19 at 35.) At step two of the sequential
13 evaluation, the ALJ determines which of claimant’s alleged impairments are “severe” within the
14 meaning of 20 C.F.R. § 404.1520(c). A severe impairment significantly limits a person’s
15 physical or mental ability to do basic work activities. Id. “An impairment is not severe if it is
16 merely ‘a slight abnormality (or combination of slight abnormalities) that has no more than a
17 minimal effect on the ability to do basic work activities.’ Webb v. Barnhart, 433 F.3d 683, 686
18 (9th Cir. 2005) (citing Social Security Ruling (“SSR”) 96-3p (1996)). “The step-two inquiry is a
19 de minimis screening device to dispose of groundless claims.” Smolen v. Chater, 80 F.3d 1273,
20 1290 (9th Cir. 1996). The purpose is to identify claimants whose medical impairment is so slight
21 that it is unlikely they would be disabled even if age, education and experience were taken into
22 account. Bowen, 482 U.S. at 153.

23 If a severe impairment exists, all medically determinable impairments must be
24 considered in the remaining steps of the sequential analysis. 20 C.F.R. § 404.1523. The ALJ
25 “must consider the combined effect of all of the claimant’s impairments on [his] ability to
26 function, without regard to whether each alone [i]s sufficiently severe.” Smolen, 80 F.3d at

1 1290; 20 C.F.R. § 404.1523.

2 Here, the ALJ found that plaintiff had the severe impairments of a major
3 depressive disorder, panic disorder and obsessive compulsive disorder. (AT 28.) Plaintiff asserts
4 that “the ALJ seriously circumscribed [plaintiff]’s claim” by failing to include headaches and
5 vertigo as severe impairments at step two. (Dkt. No. 19 at 35.)

6 While these conditions may indeed be serious, plaintiff’s argument ignores the
7 function of step two as a gatekeeping mechanism to dispose of groundless claims. Once a
8 plaintiff prevails at step two, by achieving a finding of some severe impairment, regardless of
9 which condition is found to be severe, the Commissioner proceeds with the sequential
10 evaluation, considering at each step *all* other alleged impairments and symptoms that may impact
11 her ability to work. See 42 U.S.C. § 423(d)(2)(B) (“In determining whether an individual’s
12 physical or mental impairment or impairments are of a sufficient medical severity that such
13 impairment or impairments could be the basis of eligibility under this section, the Commissioner
14 of Social Security shall consider the combined effect of all of the individual’s impairments
15 without regard to whether any such impairment, if considered separately, would be of such
16 severity.”).

17 Here, plaintiff prevailed at step two. Thus, the question becomes whether the ALJ
18 properly considered the functional limitations of all medically determinable impairments at the
19 remaining steps. See Smolen, 80 F.3d at 1290 (recognizing that if one severe impairment exists,
20 all medically determinable impairments must be considered in the remaining steps of the
21 sequential analysis) (citing 20 C.F.R. § 404.1523).

22 As discussed above, the ALJ fully considered all of plaintiff’s impairments,
23 including her headaches and vertigo, and incorporated those limitations into the RFC. The ALJ
24 ruled that “[c]onsidering the claimant’s history of treatment for headaches and dizziness, and her
25 continuing complaints of dizziness and headaches, it is found that she is prevented from working
26 at unprotected heights or with dangerous machinery.” (AT 28.) Accordingly, there was no error

1 in the step two analysis.

2 D. The ALJ's RFC And Hypothetical To The VE Were Proper

3 In a variation of the arguments raised above, plaintiff contends that because the
4 ALJ erred in "rejecting" the opinions of Drs. Ton and Jaojoco, and the statement of Ms. Johnson,
5 that he erred in assessing plaintiff's RFC. Thus, plaintiff continues, the hypothetical question
6 premised on this RFC and presented to the vocational examiner ("VE") was improper. (Dkt. No.
7 19 at 37-38.) The ALJ found that as to plaintiff's RFC that she was "limited to the performance
8 of unskilled, entry-level work involving simple, routine tasks without frequent public contact.
9 Considering the claimant's history of treatment for headaches and dizziness . . . she is prevented
10 from working at unprotected heights or with dangerous machinery. She has no exertional
11 limitations." (AT 28.)

12 Plaintiff contends in a summary fashion that "had the ALJ credited the opinions of
13 the treating psychiatrist, properly credited the opinion of the examining physician, properly
14 credited Ms. Johnson's statements and properly followed the instructions in the Remand Order
15 from the Appeals Council, a finding of disabled would have followed based on the testimony of
16 the vocational expert." (Dkt. No. 19 at 38.) Plaintiff, however, alleges no additional specific
17 error in the exchange with the VE. The ALJ properly posed a hypothetical question to the VE by
18 including the limitations supported by the appropriate weight of evidence. See, e.g., Robbins v.
19 Soc. Sec. Admin., 466 F.3d 880, 886 (9th Cir. 2006) ("As the Commissioner correctly
20 recognizes, in hypotheticals posed to a vocational expert, the ALJ must only include those
21 limitations supported by substantial evidence."). "It is clear that it is the responsibility of the
22 ALJ, not the claimant's physician, to determine residual functional capacity." Vertigan v. Halter,
23 260 F.3d 1044, 1049 (9th Cir. 2001) (citing 20 C.F.R. § 404.1545).

24 The ALJ asked the VE whether an individual with the limitations based on Dr.
25 Walter's testimony could perform simple unskilled work that did not involve working in unison
26 with others as a team. The ALJ also added that the hypothetical individual would have physical

1 limitations that included no heights, dangerous machinery or ladders due to spells of dizziness,
2 and that the job would be identified as light work. (AT 134-35.) The VE responded that plaintiff
3 would not be able to perform any of her prior jobs as child attendant or sales clerk. (AT 135.)
4 The VE found a variety of positions that did fit this hypothetical, including fishing reel assembler
5 and surveillance system monitor. (AT 136-55.)

6 The ALJ's RFC and subsequent hypothetical to the VE adequately included all
7 supported limitations. Conflicts in the evidence are to be resolved by the Commissioner.
8 Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987). The VE testified that there were a
9 substantial number of jobs for such a person given those limitations. (AT 518.) The ALJ
10 properly reasoned that the record supports plaintiff's ability to make a successful adjustment to
11 other work that exists in significant numbers in the national economy. Accordingly, the
12 Commissioner's decision is free of legal error and supported by substantial evidence in the record
13 as a whole. See Bruce, 558 F.3d at 1115.

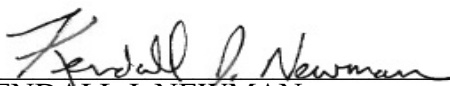
14 V. CONCLUSION

15 Based on the foregoing, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's motion for summary judgment or remand is denied;
- 17 2. The Commissioner's cross-motion for summary judgment is granted; and
- 18 3. Judgment be entered in favor of the Commissioner.

19 DATED: September 10, 2010

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23 _____
KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE
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