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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LORRAINE HUMPHREY,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. 15-cv-05851-JSC

**ORDER RE: CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

Plaintiff Lorraine Humphrey (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of a final decision by Defendant Nancy A. Berryhill, the Commissioner of the Social Security Administration (“Defendant” or “Commissioner”), denying her application for disability and insurance benefits and supplemental security income under Titles II and XVI of the Social Security Act.¹ See 42 U.S.C. §§ 401-403, 1395. Both parties have consented to the jurisdiction of the undersigned magistrate judge. (Dkt. Nos. 8, 9.) Now pending before the Court is Plaintiff’s motion for summary judgment and Defendant’s cross-motion for summary judgment. (Dkt. Nos. 25, 26.) After carefully considering the parties’ submissions, the Court DENIES Plaintiff’s motion and GRANTS Defendant’s cross-motion.

¹ While Carolyn W. Colvin was the Acting Commissioner of Social Security when Plaintiff first filed this action, that position is now held by Nancy A. Berryhill and thus she is now the correct named defendant. This change in position has no effect on Plaintiff’s pending action. See 42 U.S.C. § 405(g) (“Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.”).

1 **LEGAL STANDARD**

2 A claimant is considered “disabled” under the Social Security Act if she meets two
3 requirements. See 42 U.S.C. § 423(d); Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999).
4 First, the claimant must demonstrate “an inability to engage in any substantial gainful activity by
5 reason of any medically determinable physical or mental impairment which can be expected to
6 result in death or which has lasted or can be expected to last for a continuous period of not less
7 than 12 months.” 42 U.S.C. § 423(d)(1)(A). Second, the impairment or impairments must be
8 severe enough such that she is unable to do her previous work and cannot, based on her age,
9 education, and work experience, “engage in any other kind of substantial gainful work which
10 exists in the national economy.” Id. § 423(d)(2)(A). To determine whether a claimant is disabled,
11 an ALJ is required to employ a five-step sequential analysis, examining:

- 12 (1) whether the claimant is “doing substantial gainful activity”; (2)
13 whether the claimant has a “severe medically determinable physical
14 or mental impairment” or combination of impairments that has
15 lasted for more than 12 months; (3) whether the impairment “meets
16 or equals” one of the listings in the regulations; (4) whether, given
17 the claimant’s “residual functional capacity,” the claimant can still
18 do his or her “past relevant work”; and (5) whether the claimant
19 “can make an adjustment to other work.”

20 Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012); see 20 C.F.R. §§ 404.1520(a), 416.920(a).

21 **PROCEDURAL BACKGROUND**

22 On May 17, 2012, Plaintiff filed an application for disability insurance benefits and
23 supplemental security income under Titles II and XVI of the Social Security Act. (Administrative
24 Record (“AR”) 201-16.) Plaintiff alleged disability beginning December 31, 2008. (AR 201.)
25 Her claim was initially denied by the Social Security Administration (“SSA”) on August 8, 2012,
26 then was denied again on reconsideration on April 24, 2013. (AR 74-95, 96-128.) Plaintiff then
27 filed a request for a hearing before an Administrative Law Judge (“ALJ”). (AR 166-67.)

28 On February 26, 2014, ALJ Maxine R. Benmour held a hearing in San Rafael, California,
during which both Plaintiff and vocational expert (“VE”) John Kilcher testified. (AR 35-73.) On
April 15, 2014, the ALJ issued a written decision denying Plaintiff’s application and finding that
Plaintiff was not disabled under Sections 216(i) and 223(d) of the Social Security Act. (AR 15-

1 29.) Plaintiff filed a request for review (AR 309-10), which the Appeals Council denied on
2 October 26, 2015. (AR 1-5.) On December 21, 2015, Plaintiff initiated this action, seeking
3 judicial review of the SSA’s disability determination under 42 U.S.C. § 405(g). (Dkt. No. 1.) On
4 February 6, 2017, Plaintiff filed the present motion for summary judgment. (Dkt. No. 25.)
5 Defendant filed a cross-motion for summary judgment on March 6, 2017. (Dkt. No. 26.)

6 **ADMINISTRATIVE RECORD**

7 Plaintiff was born on May 30, 1969. (AR 201.) She worked intermittently as a caregiver
8 in various nursing facilities and at a Goodwill from 1995 to 2008 (AR 267), with her longest job
9 lasting about four to five months at Goodwill (AR 44). It was during her work as a certified
10 nursing assistant for Tamalpais Creek in July 2001 that Plaintiff tripped over a patient’s walker,
11 causing the back pain that is the source of her disability. (AR 313-14.) Plaintiff also worked for
12 about two months as a life skills instructor at a group home for disabled adults in late 2011. (AR
13 267.) She has not worked since 2011. (Id.) She is married and has one son who, at the time of
14 the ALJ hearing in 2014, had moved in with Plaintiff. (AR 57, 202.)

15 In her disability report, Plaintiff identified lower back pain, mood swings, depression, and
16 diabetes as conditions affecting her ability to carry out a normal work day. (AR 250.) For
17 example, Plaintiff’s conditions affect her ability to clean and cook. (AR 282.) She also has mood
18 swings and her body is constantly sore. (Id.) To address her various symptoms, Plaintiff takes
19 Carisoprodol, Glydurirde, HCTZ, Hydrocodone, Lisinopril, Metformin, and Vitamin D. (AR
20 281.)

21 **I. Medical Evidence**

22 The instant proceeding results from Plaintiff’s fourth application for benefits, with the
23 previous three being denied at the initial or reconsideration level in 2008, 2009, and 2011. (AR
24 113.) As part of the consideration of each of Plaintiff’s applications for benefits, Plaintiff was
25 directed to undergo various physical and mental examinations. The Court addresses the relevant
26 examinations below.

27 **A. Dr. Jonathan Gonick-Hallows**

28 On February 20, 2008, Dr. Gonick-Hallows met with Plaintiff for a psychological

1 evaluation. (AR 318-323.) As part of the evaluation, Dr. Gonick-Hallows utilized the following:
2 clinical interview; mental status examination; WAIS-III (Wechsler Adult Intelligence Scale, Third
3 Edition); Wechsler Memory Scale-III; Bender-Gestalt II; Trails A and B; and test of memory
4 malingering. (AR 319.) Dr. Gonick-Hallows did not review any medical or mental health
5 records. (Id.) After performing the various tests, he stated that Plaintiff was friendly and
6 cooperative at the interview and that she appeared to be a person that could get along well with co-
7 workers, supervisors, and the general public. (AR 322.) He noted, however, that it was possible
8 in competitive settings for Plaintiff to have moderate to severe deficits secondary to avoidant
9 features. (Id.) Dr. Gonick-Hallows further indicated that Plaintiff seemed able to understand and
10 perform simple instructions and was able to work on logic problems of nearly average complexity.
11 (Id.) He concluded that Plaintiff appeared stable at her current level of adjustment and that she
12 was competent to manage her funds. (Id.)

13 **B. Dr. Timothy Canty**

14 On July 23, 2009, Dr. Canty met with Plaintiff to perform a psychiatric evaluation. (AR
15 324-29.) Dr. Canty did not have any of Plaintiff's psychiatric records to review. (AR 324.) Dr.
16 Canty performed a mental status examination in which he asked Plaintiff a variety of questions to
17 test her intellectual functioning. (AR 325-26.) He indicated that, while Plaintiff described pain-
18 related changes in her mood and emotional state, such emotional symptoms did not seem to
19 interfere with Plaintiff's functioning and that her complaints regarding work centered entirely on
20 her back pain. (AR 326.) Dr. Canty concluded that, in light of Plaintiff's chronic back pain, she
21 would not be able to handle overly stressful or extremely fast-paced work, but she would not
22 otherwise have any psychiatric limitations to work. (AR 327.)

23 **C. Dr. Jeremy Trimble**

24 In July 2011, Dr. Trimble met with Plaintiff to conduct a complete psychiatric evaluation.
25 (AR 330-37.) In the evaluation, Dr. Trimble stated that Plaintiff was living alone; could do
26 household chores, shopping, cooking, dressing, and bathing; and could pay bills and handle cash
27 appropriately. (AR 333-34.) Dr. Trimble also recorded that Plaintiff was groomed and casually
28 dressed; was coherent and organized; had a somewhat flat affect; spoke in a normal rate, tone,

1 inflection, and prosody; and had intact recent and remote memory. (AR 334-35.) Dr. Trimble
2 ultimately concluded that Plaintiff’s psychiatric prognosis was good. (AR 336.) He further noted
3 that she was able to perform both detailed and complex tasks as well as simply and repetitive tasks
4 and was able to maintain regular attendance, persistence, and pace. (Id.) Dr. Trimble also
5 concluded that Plaintiff did not have any psychiatric limitations in her ability to perform work
6 activities; to complete a normal work day or week; to accept instructions from supervisors; to
7 interact with employers, coworkers, and the public; or to deal with the usual stresses encountered
8 in competitive work. (Id.)

9 **D. State Agency Drs. S. Amon, D. Pong, and S. Regan**

10 Dr. S. Amon, a non-examining state agency physician, reviewed the documentary evidence
11 of Plaintiff’s claim in conducting a Physical Residual Functional Capacity (“RFC”) Assessment
12 on August 7, 2012. (AR 74-83.) Dr. Amon concluded that Plaintiff could lift or carry up to 10
13 pounds frequently and up to 20 pounds occasionally; could stand or walk up to six hours in an
14 eight-hour work day; could sit up to 6 hours in an eight-hour work day; and had no limitations on
15 pushing or pulling other than as addressed for lifting and/or carrying. (AR 81.) Dr. Amon further
16 indicated that Plaintiff had no other postural, manipulative, visual, communicative, or
17 environmental limitations. (Id.)

18 On reconsideration of Plaintiff’s claim, non-examining physicians Drs. D. Pong and S.
19 Regan conducted a case analysis on April 18, 2013. (AR 96-111.) As to the physical RFC
20 assessment, Dr. Pong adopted most of Dr. Amon’s initial RFC assessment, but altered the
21 conclusion relating to Plaintiff’s postural limitations, noting that Plaintiff could only occasionally
22 climb ramps, stairs, and ladders; balance; stoop; kneel; crouch; and crawl. (AR 106.) Dr. Regan
23 engaged in a mental RFC assessment, concluding that Plaintiff was moderately limited in her
24 ability to understand and remember detailed instructions; was moderately limited in her ability to
25 carry out detailed instructions, to maintain attention and concentration for extended periods of
26 time, and to perform activities within a schedule. (AR 107-08.) Dr. Regan also found that
27 Plaintiff was moderately limited in her ability to interact appropriately with the general public.
28 (AR 108.) Lastly, Dr. Regan indicated that Plaintiff was moderately limited in her ability to

1 respond or adapt appropriately to changes in the work setting. (AR 109.)

2 **E. Dr. Les Kalman**

3 Dr. Kalman met with Plaintiff on March 23, 2013 to perform a psychiatric evaluation.
4 (AR 486-492.) Dr. Kalman noted that Plaintiff was cooperative, had average speech rate and
5 volume, and had fair eye contact. (AR 489.) He also indicated that Plaintiff had average
6 intelligence and that her mood was depressed and sad. (AR 489-90.) Dr. Kalman further noted
7 that Plaintiff did her own shopping, cooking, and housekeeping; managed her own transportation;
8 could care for her own personal hygiene; and paid her own bills. (AR 490.) Based on his
9 evaluation, Dr. Kalman concluded that Plaintiff was able to (1) interact with supervisors and co-
10 workers; (2) deal with the public; (3) understand, remember, and carry out simple one- and two-
11 step job instructions; (4) maintain attention, concentration, and memory; and (5) withstand the
12 stress and pressures associated with daily work activities. (AR 491.)

13 **F. Jordan Rose, RN**

14 On September 6, 2013, Plaintiff's primary care provider Mr. Rose completed a
15 Manipulative Limitations Residual Functional Capacity Questionnaire related to pain affecting
16 Plaintiff's hands and fingers. (AR 533-34.) The questionnaire is a check-box report and provides
17 an opportunity for brief comments, which Mr. Rose provided throughout. (Id.) Mr. Rose noted
18 that Plaintiff had tenderness and pain as well as muscle spasms that resulted from gripping her
19 hands. (AR 533.) Mr. Rose further stated that Plaintiff had significant limitations with reaching
20 and that she would be likely to be absent from work three or more days per month. (AR 534.)

21 **G. Dr. Tony D. Veletto**

22 In February 2014, Dr. Veletto completed a Lumbar Spine Residual Functional Capacity
23 Questionnaire regarding Plaintiff's physical impairments. (AR 543-47.) Dr. Veletto concluded
24 that Plaintiff had cervical and lumbar disc disease with radiculopathy, diabetes, and hypertension.
25 (AR 543.) Dr. Veletto noted that Plaintiff had severe neck and lower back pain radiating to her
26 extremities and that emotional factors contributed to the severity of Plaintiff's pain. (AR 543-44.)
27 Dr. Veletto then identified various functional limitations Plaintiff would have in the workplace as
28 a result of her impairments, including that she could not walk a full city block; she could only sit

1 or stand for 15 minutes at a time; she would need to walk around every 20 minutes; she would
2 need to be able to take unscheduled breaks during an eight-hour work day; and she may
3 occasionally need a cane or other assistive device for standing and walking. (AR 545.) He also
4 indicated that she should never lift and carry things weighing more than ten pounds and that she
5 could never twist, bend, crouch, squat, or climb ladders in a competitive workplace. (Id.) He also
6 found that Plaintiff had significant limitations with reaching, handling, and fingering. (Id.)

7 **II. Plaintiff's ALJ Hearing**

8 On February 26, 2014, Plaintiff appeared at her hearing before ALJ Maxine R. Benmour in
9 person. (AR 35.) Both Plaintiff and VE John Kilcher testified in person. (Id.)

10 **A. Plaintiff's Testimony**

11 Plaintiff has had back pains, extending from her right leg to her mid-back, since suffering
12 an industrial injury in 2001, as well as pain and spasms in both hands. (AR 46-48.) Because of
13 her back pain, Plaintiff is unable to sit, stand, or walk for long periods and also has trouble
14 sleeping. (AR 55-57.) The pain also affects Plaintiff's ability to concentrate. (AR 54.) Plaintiff
15 takes about six pills of Norco each day (two every six hours) to help with her back pain (AR 46,
16 63) and has also tried Flexeril and Soma for her hand pains (AR 48-49). Plaintiff indicated that
17 the Norco makes her drowsy. (AR 50.) Plaintiff testified that she had previously discussed with
18 her doctor options for surgery, though she could not recall any specific type of recommended
19 surgery. (AR 50-51.) According to Plaintiff, the doctor indicated that there was a 50/50 chance
20 that the surgery would help given that Plaintiff also has diabetes. (Id.) Plaintiff also suffers from
21 diabetes (for which she takes Metformin, Lisinopril, Glyburide, and HTZ) and depression (for
22 which she has taken Prozac). (AR 52-54.)

23 Plaintiff's son moved in with her to help with chores around the house, including cooking,
24 laundry, and grocery shopping. (AR 57-59.) Prior to moving back, Plaintiff's son would
25 sometimes come over to help with chores around the house; otherwise, Plaintiff would perform the
26 chores herself, though with some difficulties. (AR 67-68.)

27 **B. Vocational Expert's Testimony**

28 The ALJ presented the VE with a hypothetical individual of Plaintiff's age, education, and

1 work background who could lift and carry 20 pounds occasionally and 10 pounds frequently; sit,
2 stand, and walk six hours each in an eight-hour day; occasionally climb, balance, stoop, kneel,
3 crouch, and crawl; and is limited to simple, repetitive tasks with occasional contact with the
4 public. (AR 69-70.) The VE testified that certain jobs existed in the region and nationally that
5 such a hypothetical person could perform, including an assembler, DOT code 706.684-022,
6 classified at a light level, unskilled specific vocational preparation (“SVP”) of 2, of which there
7 are 8,500 jobs in California and 1,281,000 jobs nationally; a packager, DOT code 929.587-010,
8 classified at an SVP of 2, of which there are 15,000 jobs California and 915,000 jobs nationally; or
9 a garment folder, DOT code 789.687-066, classified at an SVP of 2, of which there are 5,000 jobs
10 in the region and 270,000 jobs nationally. (AR 70-71.)

11 The ALJ then offered a hypothetical of an individual with the same above limitations, but
12 who also was limited to frequent handling and fingering bilaterally. (AR 71.) The VE stated that
13 the additional limitation would not change his testimony, as the identified jobs did not require any
14 more than frequent handling, fingering, and reaching. (Id.) The ALJ then presented a final
15 limitation where the individual would also have to miss work three or more days a month, and the
16 VE testified that the individual could not maintain competitive employment. (Id.)

17 **III. The ALJ’s Findings**

18 The ALJ performed the five-step analysis under 20 C.F.R. § 404.1520(a) and found that
19 Plaintiff was not disabled under Sections 216(i) and 223(d) of the Social Security Act. (AR 15.)

20 At the first step, the ALJ found that Plaintiff had not engaged in substantial gainful activity
21 after her alleged onset date of December 31, 2008. (AR 17.)

22 At the second step, the ALJ determined that Plaintiff had the following severe
23 impairments: degenerative disc disease of the lumbar spine, a degenerative disc disease of the
24 cervical spine, borderline intellectual functioning, a depressive disorder, and an anxiety disorder.
25 (AR 18.)

26 At the third step, the ALJ found that Plaintiff did not have an impairment or combination
27 of impairments that met or medically equaled one of the listed impairments in 20 C.F.R. Part 404,
28 Subpart P, Appendix 1. (AR 19.) While the ALJ acknowledged that Plaintiff had “severe”

1 impairments, he concluded that her impairments were not attended with the specific clinical signs
2 and diagnostic findings required to meet or equal the requirements set forth in 20 C.F.R. Part 404,
3 Subpart P, Appendix 1 §§ 12.04, 12.06. (AR 33.)

4 At the fourth step, the ALJ determined that Plaintiff had the RFC to perform light work
5 except that Plaintiff could occasionally climb, balance, stop, kneel, crouch, and crawl. (AR 21.)
6 Further, the ALJ found that Plaintiff was limited to frequent bilateral handling and fingering as
7 well as limited to simple, repetitive tasks with occasional contact with the public. (Id.) Regarding
8 Plaintiff's own reports of her disabilities, the ALJ found her statements as to the intensity,
9 persistence, and limiting effects of her disabilities were only partially credible. (AR 21.) In
10 particular, the ALJ indicated that the record did not support Plaintiff's allegations of work-
11 preclusive limitations from her musculoskeletal impairments and associated symptoms. (Id.) The
12 ALJ found plaintiff only partially credible for several reasons.

13 First, the ALJ noted that objective medical records contradicted Plaintiff's allegations of
14 work-preclusive limitations. As to Plaintiff's physical limitations, the ALJ first noted that MRIs
15 of the lumbar and cervical spines did not substantiate Plaintiff's assertions of disabling
16 musculoskeletal pains. (AR 22.) The ALJ then discussed various physical examination findings
17 in the medical record and concluded:

18 [W]hile the claimant demonstrated tenderness and intermittent range
19 of motion limitations, because the claimant generally exhibited a
20 normal gait, intact heel and toe walking, no edema, no joint
21 deformities, symmetric reflexes, intact sensation, and full motor
22 strength, in the collective, physical examination findings by
evaluating sources do not support the claimant's allegations of
work-preclusive restrictions resulting from her musculoskeletal
impairments and associated symptoms.

23 (Id.) Regarding cognitive limitations, the ALJ determined that while Plaintiff had cognitive
24 limitations, the record did not support a finding that such limitations were disabling. (Id.) The
25 ALJ cited to Plaintiff's intelligence test scores from February 2008, which were on the upper end
26 of the borderline intellectual functioning range; Plaintiff's ability to obtain a license as a certified
27 nursing assistant, despite conflicting reports regarding the need for special education service in
28 school; the fact that Plaintiff resided alone for portions of the period of disability, regularly drove,

1 and was able to manage her own money; and the fact that Plaintiff primarily attributed difficulties
2 in performing day-to-day activities to her physical, and not mental, limitations. (AR 22-23.)
3 Finally, as to psychological limitations, the ALJ found that “while the claimant showed an
4 intermittently abnormal mood or affect and mildly impaired delayed recall, as evaluating sources
5 typically noted full orientation, normal speech, cooperative behavior, intact eye contact, a normal
6 thought process, and unremarkable thought content, examination findings by from [sic] a mental
7 standpoint do not substantiate the claimant’s allegations of disabling psychological symptoms.”
8 (AR 23.)

9 Second, the ALJ found Plaintiff partially credible because Plaintiff’s course of treatment
10 and medication was inconsistent with her allegations of disabling physical and mental
11 impairments. (Id.) As to treatment for physical symptoms, the ALJ observed that, since Plaintiff
12 first started taking Hydrocodone-Acetaminophen in early 2012 for pain control, her treating
13 physicians made no significant medication adjustments after that time. (AR 23.) The ALJ also
14 remarked that Plaintiff’s non-medication treatments were inconsistent with disabling physical
15 symptoms, as treating physicians, including a neurosurgeon, merely recommended conservative
16 treatments such as physical therapy, application of heat, and stretching exercises. (AR 24.) As to
17 mental symptoms, the ALJ noted that Plaintiff did not receive treatment for psychological
18 symptoms until September 2012 despite having received primary care treatment beginning mid-
19 2011. (Id.) Further, while Plaintiff testified at the hearing that she received psychotropic
20 medication treatments “off and on,” the ALJ found that the lack of any sustained psychological
21 visits, urgent-care visits for troubling psychological symptoms, and psychiatric inpatient
22 treatments was inconsistent with Plaintiff’s claims of disabling psychological symptoms. (Id.)

23 Third, the ALJ found that Plaintiff’s multiple inconsistent statements decreased the overall
24 persuasiveness of her testimony. The ALJ provided three examples: (1) while Plaintiff testified to
25 extremely limited daily activities at the hearing, she had previously acknowledged a considerably
26 greater range of day-to-day activities; (2) while Plaintiff claimed that she experienced drowsiness
27 due to her medications, she denied elsewhere that she had any bothersome medication side effects;
28 and (3) although she testified that a doctor had recommended possible surgical intervention, there

1 was no evidence in the record indicating any such recommendation. (Id.)

2 Fourth, the ALJ noted that Plaintiff's sporadic earning records prior to the onset of her
3 disability suggested that reasons other than Plaintiff's alleged disability may be the basis for her
4 continuing unemployment. (Id.)

5 After assessing Plaintiff's credibility, the ALJ then continued to discuss the specific
6 medical opinions in the record. As to Plaintiff's physical impairments, the ALJ first assigned
7 partial weight to Dr. Pong's physical RFC assessment (on reconsideration of Plaintiff's claims)
8 because, while Dr. Pong opined that Plaintiff would have no manipulative limitations, the medical
9 record supported the conclusion that Plaintiff would in fact have limitations to frequent bilateral
10 handling and fingering. (AR 25.) The ALJ went on to adopt other portions of Dr. Pong's
11 assessment, noting first that Dr. Pong had reviewed a sizeable portion of the medical record and
12 that he, as a state agency physician, had a thorough understanding of the SSA's disability
13 programs and evidentiary requirements. (Id.) The ALJ specifically agreed with Dr. Pong's
14 conclusions that Plaintiff would be limited to lifting 20 pounds occasionally and 10 pounds
15 frequently and that Plaintiff had postural limitations. (Id.) The ALJ gave little weight to state
16 agency physician Dr. Amon's earlier finding that Plaintiff could perform a full range of light
17 work, as Dr. Pong's later opinion was more consistent with the medical record. (Id.) The ALJ
18 next assigned little weight to Mr. Rose's assessment regarding Plaintiff's work-preclusive
19 restrictions, including that she would likely be absent from the workplace three or more days per
20 month because: (1) Mr. Rose's conclusion lacked support from his physical examination findings;
21 (2) there were no abnormal findings involving Plaintiff's upper extremities; (3) Mr. Rose provided
22 no explanations to support his conclusions; and (4) his opinion was inconsistent with the balance
23 of the medical evidence. (AR 25-26.) The ALJ also gave little weight to Dr. Veletto's opinion as
24 to Plaintiff's work-preclusive restrictions because: (1) as with Mr Rose, Dr. Veletto did not
25 provide explanations to support his conclusions; (2) Dr. Veletto made inconsistent findings
26 regarding Plaintiff's ability to engage in fingering; (3) while Dr. Veletto stated that Plaintiff would
27 occasionally require an assistive device, Plaintiff in fact consistently displayed a normal gait and
28 the record contained no mention of use of an assistive device; (4) Dr. Veletto's determinations

1 regarding Plaintiff's manipulative, exertional, and postural limitations were not supported by the
2 totality of the medical evidence; and (5) Dr. Veletto's findings were inconsistent with the
3 proposed treatment plan. (AR 26.)

4 Regarding Plaintiff's mental impairments, the ALJ gave great weight to the two state
5 agency psychologist medical opinions dated April 18 and 23, 2013. (Id.) The ALJ noted that the
6 state agency psychologists reviewed a large volume of the medical evidence and had a thorough
7 understanding of the SSA's disability programs and evidentiary requirements. (Id.) Furthermore,
8 the ALJ found support in the medical record the psychologists' conclusions that Plaintiff would be
9 limited to simple tasks and would require limited public contact. (Id.) Next, the ALJ gave little
10 weight to Dr. Gonick-Hallows's medical opinion because he reviewed no recent medical evidence
11 in rendering the opinion; his conclusion that Plaintiff had "avoidant features" was irreconcilable
12 with his finding that Plaintiff could get along well with others; and his conclusion that Plaintiff
13 suffered from work-preclusive limitations was unsupported by the medical evidence. (AR 27.)

14 The ALJ also accorded little weight to Dr. Canty's opinion that, while Plaintiff should not perform
15 "stressful or extremely fast-paced work," she would otherwise have no appreciable functional
16 limitations. (Id.) The ALJ noted that Dr. Canty did not review any medical evidence and that the
17 medical record in fact indicates that Plaintiff would have limitations in performing more than
18 simple tasks or interacting with the public. (Id.) The ALJ also stated that Dr. Canty's use of the
19 vague and subjective words "stressful" and "fast-paced" diminished from the probative value of
20 his opinion. (Id.) The ALJ similarly gave little weight to Dr. Trimble's assessment that Plaintiff
21 would have no functional limitations. (Id.) According to the ALJ, Dr. Trimble's opinion was
22 inconsistent not only with the medical evidence as a whole but also with Dr. Trimble's own
23 findings of Plaintiff's flat affect, mildly impaired recall, and impaired serial seven exercises. (Id.)
24 The ALJ gave partial weight to Dr. Kalman's medical opinion; the ALJ agreed with the
25 conclusion that Plaintiff would be limited to simple tasks but found that Dr. Kalman's conclusion
26 that Plaintiff would have no limitation interacting with others in the workplace was inconsistent
27 with the medical record. (Id.) Lastly, the ALJ assigned little weight to the August 2012 opinion
28 from Dr. Amon indicating that Plaintiff had no severe mental impairment. (AR 28.) That opinion,

1 according to the ALJ, was inconsistent with the medical record, including the April 2013 medical
2 opinions from state agency psychologists to which the ALJ gave great weight. (Id.)

3 At the fifth step, the ALJ found that there were jobs that existed in significant numbers in
4 the national economy that Plaintiff could perform based on the VE's testimony and the RFC that
5 resulted. (AR 28-29.) The VE found that Plaintiff could perform unskilled, light occupations like
6 an assembler, a packager, or a garment folder. (AR 29.) Therefore, the ALJ found that Plaintiff
7 was not disabled. (Id.)

8 STANDARD OF REVIEW

9 Pursuant to 42 U.S.C. § 405(g), the Court has authority to review an ALJ's decision to
10 deny benefits. When exercising this authority, however, the "Social Security Administration's
11 disability determination should be upheld unless it contains legal error or is not supported by
12 substantial evidence." *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007); see also *Andrews v.*
13 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.
14 1989). Substantial evidence is "such relevant evidence as a reasonable mind might accept as
15 adequate to support a conclusion"; it is "more than a mere scintilla, but may be less than a
16 preponderance." *Molina*, 674 F.3d at 1110-11 (internal citations and quotation marks omitted);
17 *Andrews*, 53 F.3d at 1039 (same). To determine whether the ALJ's decision is supported by
18 substantial evidence, the reviewing court "must consider the entire record as a whole and may not
19 affirm simply by isolating a specific quantum of supporting evidence." *Hill v. Astrue*, 698 F.3d
20 1153, 1159 (9th Cir. 2012) (internal citations and quotation marks omitted).

21 Determinations of credibility, resolution of conflicts in medical testimony, and all other
22 ambiguities are roles reserved for the ALJ. See *Andrews*, 53 F.3d at 1039; *Magallanes*, 881 F.2d
23 at 750. "The ALJ's findings will be upheld if supported by inferences reasonably drawn from the
24 record." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (internal citations and
25 quotation marks omitted); see also *Batson v. Comm'r of Soc. Sec.*, 359 F.3d 1190, 1198 (9th Cir.
26 2004) ("When the evidence before the ALJ is subject to more than one rational interpretation, we
27 must defer to the ALJ's conclusion."). "The court may not engage in second-guessing."
28 *Tommasetti*, 533 F.3d at 1039. "It is immaterial that the evidence would support a finding

1 contrary to that reached by the Commissioner; the Commissioner’s determination as to a factual
 2 matter will stand if supported by substantial evidence because it is the Commissioner’s job, not the
 3 Court’s, to resolve conflicts in the evidence.” *Bertrand v. Astrue*, No. 08-CV-00147-BAK, 2009
 4 WL 3112321, at *4 (E.D. Cal. Sept. 23, 2009). Similarly, “[a] decision of the ALJ will not be
 5 reversed for errors that are harmless.” *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).
 6 However, the Court can only affirm the ALJ’s findings based on reasoning that the ALJ himself
 7 asserted. See *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). In other words, the Court’s
 8 consideration is limited to “the grounds articulated by the agency[.]” *Cequerra v. Sec’y*, 933 F.2d
 9 735, 738 (9th Cir. 1991).

10 **DISCUSSION**

11 The only issue raised on appeal is whether the ALJ properly rejected Plaintiff’s pain
 12 testimony as not credible. “An ALJ engages in a two-step analysis to determine whether a
 13 claimant’s testimony regarding subjective pain or symptoms is credible.” *Garrison v. Colvin*, 759
 14 F.3d 995, 1014 (9th Cir. 2014). “First, the ALJ must determine whether the claimant has
 15 presented objective medical evidence of an underlying impairment which could reasonably be
 16 expected to produce the pain or other symptoms alleged.” *Lingenfelter v. Astrue*, 504 F.3d 1028,
 17 1036 (9th Cir. 2007) (internal citations and quotation marks omitted). “Second, if the claimant
 18 meets this first test, and there is no evidence of malingering, the ALJ can reject the claimant’s
 19 testimony about the severity of her symptoms only by offering specific, clear and convincing
 20 reasons for doing so.” *Id.* (internal citations and quotation marks omitted). This “clear and
 21 convincing” standard is not an easy requirement to meet and “is the most demanding [standard] in
 22 Social Security cases.” *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002).
 23 “General findings are an insufficient basis to support an adverse credibility determination.”
 24 *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). Rather, the ALJ “must state which
 25 pain testimony is not credible and what evidence suggests the claimant[] [is] not credible.”
 26 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

27 Applying the two-step analysis, the ALJ found that Plaintiff’s “medically determinable
 28 impairments could reasonably be expected to cause the alleged symptoms,” but that her statements

1 concerning the “intensity, persistence, and limiting effects of these symptoms” were only partially
2 credible. (AR 21.) In making this determination, the ALJ did not find that Plaintiff was
3 malingering; the ALJ thus was required to set forth specific, clear and convincing reasons for
4 rejecting Plaintiff’s pain testimony. See *Lingenfelter*, 504 F.3d at 1036.

5 Because symptoms regarding pain are difficult to quantify, the SSA regulations list
6 relevant factors to assist ALJs in their credibility analysis. These factors include:

- 7 (1) The individual’s daily activities;
- 8 (2) The location, duration, frequency, and intensity of the individual’s pain or other symptoms;
- 9 (3) Factors that precipitate and aggravate the symptoms;
- 10 (4) The type, dosage, effectiveness, and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms;
- 11 (5) Treatment, other than medication, the individual receives or has received for relief of pain or other symptoms;
- 12 (6) Any measures other than treatment the individual uses or has used to relieve pain or other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes every hour, or sleeping on a board); and
- 13 (7) Any other factors concerning the individual’s functional limitations and restrictions due to pain or other symptoms.

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15 20 C.F.R. § 404.1529(c)(3); see also *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997)
16 (“In weighing a claimant’s credibility, the ALJ may consider his reputation for truthfulness,
17 inconsistencies either in his testimony or between his testimony and his conduct, his daily
18 activities, his work record, and testimony from physicians and third parties concerning the nature,
19 severity, and effect of the symptoms of which he complains.”). These factors are intended to
20 “ensure that the determination of disability is not a wholly subjective process, turning solely on
21 the identity of the adjudicator.” *Bunnel v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991).

22 Here, the ALJ explained her adverse credibility finding regarding Plaintiff’s specific
23 allegations of work-preclusive limitations from her musculoskeletal impairments and associated
24 symptoms: (a) objective medical evidence contradicted Plaintiff’s claims of disabling
25 musculoskeletal pains, cognitive impairments, and psychological limitations; (b) Plaintiff’s course
26 of medication and physical treatment were inconsistent with her allegations of disabling physical
27 and mental symptoms; (c) Plaintiff made inconsistent statements regarding the scope of her daily
28 activities, the side effects from her medication, and her claim that an evaluating surgeon

1 recommended surgical intervention; and (d) Plaintiff’s sporadic earning records prior to the onset
2 of her disability suggested that reasons other than Plaintiff’s alleged disability may be the basis for
3 her unemployment. (AR 21-24.) The ALJ provided clear and convincing reasons to support her
4 adverse credibility finding, and the Court therefore rejects Plaintiff’s challenge.²

5 **I. Objective Medical Evidence**

6 “While subjective pain testimony cannot be rejected on the sole ground that it is not fully
7 corroborated by objective medical evidence, the medical evidence is still a relevant factor in
8 determining the severity of the claimant’s pain and its disabling effects.” Rollins v. Massanari,
9 261 F.3d 853, 857 (9th Cir. 2001) (citation omitted); see also 20 C.F.R. § 404.1529(c)(2) (stating
10 that evaluation of the intensity and persistence of an individual’s symptoms, such as pain, includes
11 “[c]onsideration of objective medical evidence”). As detailed above, the ALJ concluded that
12 Plaintiff’s testimony as to her allegedly work-preclusive physical, cognitive, and psychological
13 limitations was not supported by objective medical evidence, including, among other things, MRIs
14 of Plaintiff’s lumbar spine and cervical spine, physical examination findings by evaluating
15 physicians, intelligence testing scores, and mental status examinations. (AR 21-23.)

16 Plaintiff does not challenge the substance of the ALJ’s findings related to the objective
17 medical evidence. Instead, she argues that the ALJ improperly rejected her hearing testimony
18 based solely on a lack of supporting objective medical evidence. (See Dkt. No. 25 at 8.) This
19 argument, however, has no merit—the ALJ set forth multiple clear and convincing reasons for
20 dismissing Plaintiff’s testimony, and she properly considered objective medical evidence as one
21 relevant factor in her assessment of Plaintiff’s credibility. See Lott v. Colvin, No. 14-CV-01421-
22 JSC, 2015 WL 1738430, at *8 (N.D. Cal. Apr. 10, 2015) (“A lack of objective medical evidence
23 corroborating a claimant’s alleged symptoms is an appropriate factor for discounting a claimant’s
24 credibility when, as here, the ALJ’s credibility finding is supported by other clear and convincing
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26 ² Aside from the arguments addressed below, Plaintiff also argues that the ALJ’s credibility
27 determination was erroneous because she improperly relied on boilerplate language that many
28 courts have previously rejected. (See Dkt. No. 25 at 7-8.) This argument is baseless; as discussed
below, the ALJ articulated clear and convincing reasons for giving little weight to Plaintiff’s
testimony. The ALJ therefore did not, as Plaintiff contends, rely solely on boilerplate language to
disregard Plaintiff’s testimony.

1 reasons.”) (citations omitted); see also Burch, 400 F.3d at 681; *Carmickle v. Comm’r, Soc. Sec.*
 2 *Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008) (“Contradiction with the medical record is a
 3 sufficient basis for rejecting the claimant's subjective testimony”); *Lingenfelter v. Astrue*, 504 F.3d
 4 1028, 1040 (9th Cir. 2007) (in assessing credibility, ALJ may consider whether medical evidence
 5 is consistent with the alleged symptoms).

6 **II. Course of Treatment**

7 A conservative course of treatment can undermine allegations of debilitating pain. See
 8 *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007); see also SSR 96-7p, 1996 WL 374186, at *7
 9 (July 2, 1996) (“[An] individual’s statements may be less credible if the level or frequency of
 10 treatment is inconsistent with the level of complaints.”). The ALJ dismissed Plaintiff’s testimony
 11 as partially credible because the course of treatment, both for Plaintiff’s physical and mental
 12 impairments, was routine and conservative. (AR 23-24.) Plaintiff contests the ALJ’s finding on
 13 grounds that no non-conservative treatment options existed and narcotic medications are not a
 14 form of conservative treatment. (See Dkt. No. 25 at 10-11.)

15 As to Plaintiff’s first point, she is correct that “[a] claimant cannot be discredited for failing
 16 to pursue non-conservative treatment options where none exist.” *Lapeirre-Gutt v. Astrue*, 382 F.
 17 App’x 662, 664 (9th Cir. 2010); see also *Carmickle*, 533 F.3d at 1162 (“[C]onservative course of
 18 treatment . . . is not a proper basis for rejecting the claimant’s credibility where the claimant has a
 19 good reason for not seeking more aggressive treatment.”). However, while there is no affirmative
 20 indication in the record that no non-conservative treatment options existed, it is important to
 21 note—as the ALJ did—that Plaintiff consulted a neurosurgeon who indicated that Plaintiff’s
 22 lumbar spine appeared “ok” and recommended only a course of physical therapy (AR 24, 439,
 23 442)—and not any more drastic forms of treatment such as surgery. This fact supports the ALJ’s
 24 negative credibility finding. See *Lott*, 2015 WL 1738430, at *7 (“An ALJ may discount a
 25 claimant’s symptom testimony where the claimant describes severe and disabling symptoms but
 26 has sought or received only minimal or conservative treatment for her complaints.”) (emphasis
 27 added) (citation omitted).

28 As for Plaintiff’s second point, there is no guiding authority on what exactly constitutes

1 “conservative” or “routine” treatment. Several courts in this Circuit have found the use of
2 medication to control pain, and the absence of surgery or injections, to be “conservative”
3 treatment. See, e.g., *Huerta v. Colvin*, No. CV 13-05935-JEM, 2014 WL 1092467, at *7 (C.D.
4 Cal. Mar. 18, 2014) (“Conservative treatment is a legitimate basis for discounting a claimant’s
5 credibility Plaintiff’s diabetes and back pain were controlled with medication, and there is no
6 evidence of ongoing specialist care, physical therapy or surgery.”); *Johnson v. Colvin*, No. 1:12-
7 CV-524-AWI-GSA, 2013 WL 2643305, at *13 (E.D. Cal. June 12, 2013) (“Plaintiff’s spinal pain
8 was treated with medication and not injections or surgery” and this “[c]onservative course of
9 treatment is a proper basis to reject Plaintiff’s subjective complaints.”). In light of the
10 conservative non-medication treatments, including physical therapy, as well as the lack of any
11 surgical recommendations, the ALJ’s characterization of Plaintiff’s use of narcotics as
12 “conservative” was at least reasonable, and the Court defers to that conclusion. See *Batson*, 359
13 F.3d at 1198.

14 Accordingly, the course of treatment for Plaintiff’s impairments was a clear and
15 convincing reason for the ALJ to discount Plaintiff’s hearing testimony.

16 **III. Inconsistent Statements**

17 In evaluating a claimant’s testimony, the ALJ “may consider inconsistencies . . . in the
18 claimant’s testimony [.]” *Molina*, 674 F.3d at 1112. An ALJ’s adverse credibility finding may be
19 based in part due to a claimant’s inconsistent statements to her doctors. See *Thomas v. Barnhart*,
20 278 F.3d 947, 959 (9th Cir. 2002). The ALJ identified the specific hearing testimony she found
21 not credible and explained why. First, regarding Plaintiff’s testimony that she had extremely
22 limited daily activities, the ALJ noted that Plaintiff had previously acknowledged a considerably
23 greater range of day-to-day activities. (AR 24.) Plaintiff disputes this finding because, according
24 to her, “[e]ven the fact that [Plaintiff] has some ability some of the time to perform something is
25 not reason enough to find [her] not credible.” (Dkt. No. 25 at 11.) While the administrative
26 record could arguably support Plaintiff’s position, the Court must defer to the ALJ’s conclusion
27 where, as here, the conclusion is a reasonable one. See *Batson*, 359 F.3d at 1198. Second, as to
28 Plaintiff’s testimony that her medications caused drowsiness, the ALJ cited prior medical records

1 where Plaintiff had indicated no negative side effects from her medication. (AR 24.) Finally, the
2 ALJ commented that, while Plaintiff testified regarding possible surgical recommendations for her
3 impairments, the medical record indicated to the contrary. (Id.) Because the ALJ identified
4 inconsistencies within Plaintiff's statements, the ALJ cited specific, clear and convincing reasons
5 to support her adverse credibility finding on this basis. While the Court, and perhaps other ALJs,
6 may have excused these inconsistencies, they fairly contribute to the ALJ's ultimate adverse
7 credibility finding.

8 **IV. Work History**

9 A finding that a claimant has an "extremely poor work history" and "has shown little
10 propensity to work in her lifetime" negatively affects the claimant's credibility regarding her
11 inability to work. See Thomas, 278 F.3d at 959. Here, the ALJ noted that Plaintiff's earnings
12 records demonstrated that she worked only sporadically even prior to her alleged onset date of
13 disability, which suggests that reasons other than Plaintiff's medical impairments may have been
14 the basis for her continuing unemployment. (AR 24.) Plaintiff's motion does not address this
15 point at all. The Court concludes that it was at least rational for the ALJ to view Plaintiff's
16 sporadic work history as negatively affecting her credibility and must therefore uphold such a
17 finding even if the evidence could afford an inference more favorable to Plaintiff. See Burch, 400
18 F.3d at 680; see also Molina, 674 F.3d at 1111 ("Even when the evidence is susceptible to more
19 than one rational interpretation, we must uphold the ALJ's findings if they are supported by
20 inferences reasonably drawn from the record"). This is a clear and convincing reason for the ALJ
21 to discount Plaintiff's hearing testimony.

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1 **CONCLUSION**

2 For the reasons stated above, the Court rejects Plaintiff’s arguments as to the sufficiency of
3 the ALJ’s adverse credibility finding. Accordingly, Plaintiff’s motion for summary judgment is
4 DENIED and Defendant’s cross-motion for summary judgment is GRANTED. Judgment will be
5 entered in favor of Defendant and against Plaintiff.

6 This Order disposes of Docket Nos. 25 and 26.

7 **IT IS SO ORDERED.**

8 Dated: March 29, 2017

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11 JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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United States District Court
Northern District of California