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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 NACIMO A.,

12 Plaintiff,

13 v.

14 KILOLO KIJAKAZI, Acting
15 Commissioner of Social Security,

16 Defendant.

Case No.: 20-cv-1780-KSC

**ORDER ON JOINT MOTION FOR
JUDICIAL REVIEW**

[Doc. No. 20]

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18 On September 10, 2020, plaintiff Nacimo A. (“plaintiff”) filed a complaint under 42
19 U.S.C. §§ 405(g) and 1383(c) seeking judicial review of the Commissioner of the Social
20 Security Administration’s¹ (“defendant” or the “Commissioner”) denial of disability
21 insurance benefits and supplemental security income under Titles II and XVI of the Social
22 Security Act (the “Act”). Doc. No. 1. Before the Court is the parties’ Joint Motion for
23 Judicial Review of the Commissioner’s final decision (the “Joint Motion” or “Jt. Mot.”).
24 Doc. No. 20. The parties have consented to have the matter heard and resolved by a
25 Magistrate Judge. Doc. No. 5. Having considered the papers, the Certified Administrative
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28 ¹ Pursuant to Federal Rule of Civil Procedure 25(d), Kilolo Kijakazi is substituted for
Andrew M. Saul. *See* Fed. R. Civ. P. 25(d).

1 Record (“AR”), and the applicable law, the Court hereby **AFFIRMS** the Administrative
2 Law Judge’s (“ALJ”) decision.

3 **I. BACKGROUND**

4 In December 2014, plaintiff filed applications for period of disability and disability
5 insurance benefits and supplemental security income under Titles II and XVI of the Act,
6 alleging a disability onset date of January 1, 2009. AR at 315-27.² The Social Security
7 Administration denied plaintiff’s claims initially and upon reconsideration. *Id.* at 198-99.
8 Plaintiff requested a hearing before an ALJ, and such hearing was held on May 30, 2017.
9 *Id.* at 67-90. On October 17, 2017, an ALJ issued a decision denying plaintiff’s claim. *Id.*
10 at 156-68. On September 11, 2018, after a timely appeal, the Appeals Council vacated the
11 ALJ’s decision and remanded for further proceedings. *Id.* at 174-79. The Appeals Council
12 directed further consideration of plaintiff’s residual functional capacity (“RFC”), in part,
13 due to new evidence of back, neck, and shoulder impairments. *Id.* at 176-77.

14 On November 26, 2019, pursuant to the order of remand, a supplemental hearing
15 was held in San Diego, California, before a different ALJ. *Id.* at 37-66. Plaintiff appeared
16 with counsel and gave testimony, as did a vocational expert. *Id.* After the hearing, the ALJ
17 requested the opinion of a medical expert, Steven Saul Goldstein, M.D., who reviewed
18 plaintiff’s entire medical record and provided responses to interrogatories. *See* AR at 3192-
19 217.

20 On February 13, 2020, the ALJ issued a written decision finding plaintiff was not
21 disabled as defined in the Act from January 1, 2009 through the date last insured. *Id.* at 15-
22 27. On July 22, 2020, the Appeals Council denied review of the ALJ’s decision, which then
23 became the final decision of the Commissioner pursuant to 42 U.S.C.
24 § 405(h). *Id.* at 1-6. This action followed.

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² The Court adopts the parties’ pagination of the AR. All other citations are to the page numbers assigned by the Court’s CM/ECF system.

1 In making this assessment, the ALJ found plaintiff's statements about the intensity,
2 persistence, and limiting effects of her symptoms were "not entirely consistent with the
3 medical evidence and other evidence in the record." *Id.* The ALJ cited to findings and
4 impressions from various diagnostic imaging reports, plaintiff's treatment, and normal
5 examinations to discount plaintiff's subjective allegations of impairment. *Id.* at 22-23.

6 The ALJ's RFC assessment is generally consistent with that of the medical expert,
7 Dr. Goldstein, who submitted a December 14, 2019 medical source statement. AR at 24-
8 25 (citing *id.* at 3206-17 (Ex. 64F)). Notably, Dr. Goldstein's RFC assessment found
9 plaintiff capable of performing *more* postural activities and manipulative movements in the
10 right and left upper extremities than the ALJ's final RFC assessment. *Compare* AR at 21
11 *with id.* at 3208-09. The ALJ assigned significant weight to this opinion, reasoning that Dr.
12 Goldstein had the most recent record review and supported his findings with citations to
13 the medical evidence of record. *Id.* at 25.

14 The ALJ also acknowledged the opinions of state medical consultants, M. Weeks,
15 M.D. and B. Rudnick, M.D., who recommended light work with some limitations. *Id.* at
16 24 (citing *id.* at 91-102 (Ex. 1A) and 117-133 (Ex. 5A)). The ALJ assigned limited weight
17 to these opinions, as such opinions were issued before the October 2017 ALJ decision, and
18 the post-remand medical evidence of record warranted additional limitations. *Id.* at 24.

19 Plaintiff's treating physician, Mohammed K. Elsayed, M.D., completed a physical
20 RFC questionnaire in May 2017 and a medical source statement in September 2019. AR at
21 1260-64 and 2717-19. Dr. Elsayed found plaintiff capable of only low-stress jobs and
22 opined she would miss more than four days of work each month due to her impairments.
23 *See id.* He stated that plaintiff suffers from "serious medical conditions that might impair
24 [her] ability to perform any kind of work . . ." *Id.* at 2719. The ALJ observed that the
25 limitations recommended by Dr. Elsayed did not support work at the sedentary level. *See*
26 *id.* at 24. Further, in giving little weight to these opinions, the ALJ stated:

27 In choosing to represent . . . [plaintiff] in the most disabled light as possible, Dr.
28 Elsayed's opinion overstates . . . [plaintiff's] limitations. Specifically, the

1 demonstrated severity of . . . [plaintiff's] medical problems as reflected in the
2 physical examination records and the MRI reports do not suggest that the claimant
3 must be prone for half of the day. Likewise, Dr. Elsayed's personal clinical notes do
4 not validate the severity of his assessed limitations, insofar as he noted the claimant's
5 absence of weakness and generally improved or stable physical condition. Based on
the discrepancy between the objective records and the severity of Dr. Elsayed's
assessed limitations, the undersigned gives little weight to him.

6 AR at 24.

7 The ALJ also assigned limited weight to a physical capacity assessment performed
8 in connection with an application for State benefits which limited plaintiff to sedentary
9 work. *Id.* (citing *id.* at 947-949 (Ex. 15F)). The ALJ found the assessment unsupported due
10 to the "lack of serious findings documented in . . . [plaintiff's] numerous MRI scans" and
11 plaintiff's stable condition. *Id.*

12 The ALJ reviewed a June 2015 Third-Party Function Report from plaintiff's
13 daughter. AR at 24-25. The report described plaintiff's chronic pain and fatigue. *Id.* at 25
14 (citing *id.* at 420-28 (Ex. 6E)). The ALJ assigned limited weight to this report, finding the
15 evidence of record did support the severity of the pain report and plaintiff's fatigue was
16 only consistent with lupus flare-ups which could be accommodated by a light work
17 restriction. *Id.* at 24-25.

18 At step four, the ALJ analyzed the evidence in the record and found plaintiff unable
19 to perform past relevant work as a sales clerk, assembler, and parking lot attendant. *Id.* at
20 25. In making this determination, the ALJ considered the vocational expert's testimony
21 that past relevant work would be precluded due to plaintiff's limitations in reaching. *Id.* at
22 25-26.

23 At step five, after considering plaintiff's age, education, work experience and RFC,
24 the ALJ found that there are jobs that exist in significant numbers in the national economy
25 that plaintiff can perform. AR at 26-27. Pursuant to the vocational expert's testimony, this
26 includes light unskilled occupations such as usher, furniture rental consultant, and a
27 children's attendant. *Id.* at 26. Because the ALJ found plaintiff capable of a successful
28 adjustment to other work that exists in significant numbers in the national economy, the

1 ALJ determined plaintiff was not disabled under the Act at any time from the alleged onset
2 date through the date of the decision. *Id.* at 37; *see also* 20 C.F.R. §§ 404.1520(g),
3 416.920(g).

4 **III. ISSUE IN DISPUTE**

5 The parties present a single issue for the Court’s review: Whether the ALJ properly
6 considered the opinion of plaintiff’s treating physician. *Jt. Mot.* at 4.

7 **IV. STANDARD OF REVIEW**

8 The Act provides for judicial review of a final agency decision denying a claim for
9 disability benefits in federal district court. 42 U.S.C. § 405(g). “[F]ederal court review of
10 social security determinations is limited.” *Treichler v. Comm’r Soc. Sec. Admin.*, 775 F.3d
11 1090, 1098 (9th Cir. 2014). A federal court will uphold the Commissioner’s disability
12 determination if it is free of legal error and is supported by substantial evidence. *Garrison*
13 *v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014) (citing *Stout v. Comm’r Soc. Sec. Admin.*,
14 454 F.3d 1050, 1052 (9th Cir. 2006)). “‘Substantial evidence’ means more than a mere
15 scintilla, but less than a preponderance; it is such relevant evidence as a reasonable person
16 might accept as adequate to support a conclusion.” *Lingenfelter v. Astrue*, 504 F.3d 1028,
17 1035 (9th Cir. 2007) (citation omitted). In reviewing whether the ALJ’s decision is
18 supported by substantial evidence, the Court must consider the record as a whole,
19 “weighing both the evidence that supports and the evidence that detracts from the
20 Commissioner’s conclusion . . .” *Id.* (quoting *Reddick v. Chater*, 157 F.3d 715, 720 (9th
21 Cir. 1998)).

22 “The ALJ is responsible for determining credibility, resolving conflicts in medical
23 testimony, and for resolving ambiguities.” *Garrison*, 759 F.3d at 1010 (quoting *Andrews*
24 *v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). When evidence supports more than one
25 rational interpretation, the ALJ’s conclusion must be upheld. *See Batson v. Comm’r Soc.*
26 *Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). Stated differently, when “the evidence
27 can reasonably support either affirming or reversing a decision, [the court] may not
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1 substitute [its] judgment for that of the [ALJ].” *Garrison*, 759 F.3d at 1010 (citation
2 omitted) (third alteration in original).

3 V. DISCUSSION

4 Plaintiff contends the ALJ impermissibly rejected Dr. Elsayed’s treating physician
5 opinion by failing to provide specific and legitimate reasons supported by substantial
6 evidence. Doc. No. 20 at 5-11. She argues that the ALJ incorrectly concluded that Dr.
7 Elsayed overstated plaintiff’s limitations, improperly extrapolated MRI reports to assess
8 functional limitations, and merely copied the previous ALJ’s assessment of Dr. Elsayed’s
9 opinion. *Id.* Plaintiff asks the Court to credit Dr. Elsayed’s opinion as true and remand this
10 case for the payment of benefits. *Id.* at 10-11. Defendant counters that the ALJ properly
11 discounted Dr. Elsayed’s opinion because it was unsupported by the medical evidence, it
12 failed to consider that plaintiff’s impairments were controlled with treatment, and it
13 contradicted Dr. Goldstein’s expert opinion. *Id.* at 12-15.

14 An ALJ must consider all evidence, including medical opinions, in determining
15 whether the claimant is disabled. *See* 20 C.F.R. § 416.920(a)(3). In this case, under the
16 then-existing regulatory framework, the ALJ’s treatment of the medical opinions in the
17 record depended upon whether the opinions were proffered by treating, examining, or non-
18 examining physicians.³ That framework provided that the opinions of treating physicians,
19 who were presumed to have “the most significant clinical relationship with the claimant[,]”
20 [were] generally entitled to more weight than those with lesser relationships.” *Carmickle*
21 *v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008); *see also Orn v. Astrue*,
22 495 F.3d 625, 631 (9th Cir. 2007) (noting that “[b]y rule, the Social Security
23 Administration favors the opinion of a treating physician over non-treating physicians”)
24 (citing 20 C.F.R. § 404.1527). To discredit a treating provider’s opinion, the ALJ must give
25 “specific and legitimate reasons for doing so that are supported by substantial evidence.”
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27 ³ The regulations no longer require special consideration of a treating physician’s opinion.
28 However, because plaintiff’s claim for benefits was filed before March 27, 2017, the
previous regulatory framework applies. *See* 20 C.F.R. §§ 404.1520c and 404.1527.

1 *Coleman v. Saul*, 979 F.3d 751, 756 (9th Cir. 2020) (citation omitted). “The ALJ [could]
2 meet [this] burden by setting out a detailed and thorough summary of the facts and
3 conflicting clinical evidence, stating his interpretation thereof, and making findings.”
4 *Magellanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). Failure to do
5 so is legal error. *See Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996); *accord*
6 *Garrison*, 759 F.3d at 1012-13 (“[A]n ALJ errs when he rejects a medical opinion or
7 assigns it little weight while doing nothing more than ignoring it, asserting without
8 explanation that another medical opinion is more persuasive, or criticizing it with
9 boilerplate language that fails to offer a substantive basis for his conclusion.”).

10 Although afforded relatively greater weight than the opinion of an examining or non-
11 examining physician, however, a treating provider’s opinion is “not binding on an ALJ
12 with respect to the existence of an impairment or the ultimate determination of disability.”
13 *Batson*, 359 F.3d at 1195 (citation omitted). Notably, the ALJ is not required to accept any
14 opinion “at face value” and may properly reject an “opinion [that] is brief, conclusory and
15 inadequately supported by clinical findings.” *Ford*, 950 F.3d 1141, 1155 (9th Cir. 2020)
16 (citation omitted).

17 Regardless of source, in evaluating a medical opinion the ALJ should also consider
18 “[a]dditional factors” set forth in the regulations, such as “the amount of relevant evidence
19 that supports the opinion and the quality of the explanation provided,” whether the medical
20 opinion is consistent with the record as a whole, and the opining physician’s specialty,
21 awareness of “the Administration’s ‘disability programs and their evidentiary
22 requirements,” and familiarity with the case record. *See Orn*, 495 F.3d at 631 (citation
23 omitted); *see also* 20 C.F.R. § 404.1527(c).

24 Initially, plaintiff correctly notes that the ALJ’s assessment of Dr. Elsayed’s opinion
25 largely mirrors that of the prior 2017 ALJ decision. *Compare* AR at 24 *with id.* at 165.
26 However, there is one exception: the ALJ also discussed Dr. Elsayed’s September 2019
27 medical source statement. *See* AR at 24 (citing *id.* at 2716-19). Dr. Elsayed’s 2019 opinion
28 addressed impairments that were found to be “severe” after the 2017 decision, including

1 SLE. *See id.* at 2716-19. It also addressed the placement of a pacemaker in April 2019. *Id.*
2 Plaintiff is therefore incorrect that the ALJ’s evaluation of Dr. Elsayed’s opinion “is merely
3 a reiteration of the prior [ALJ’s] reasoning . . . [and] fails to take into impairments [sic]
4 that became crystallized after 2017.” Jt. Mot. at 9.

5 Given that the ALJ’s decision addresses post-remand evidence, the Court will
6 proceed to review the reasons cited by the ALJ in rejecting the physician’s opinion to
7 determine whether they constitute specific and legitimate reasons supported by substantial
8 evidence. *See generally, Murphy v. Colvin*, No. 15-cv-222-BAM, 2016 WL 4577793, *10
9 (E.D. Cal. Sept. 2, 2016) (finding ALJ’s credibility determination regarding plaintiff’s
10 subjective allegations of impairment supported by substantial evidence in record despite
11 ALJ cutting and pasting statements from another decision regarding use of extremities). As
12 discussed, the ALJ discounted Dr. Elsayed’s opinion based upon a “discrepancy between
13 the objective records and the severity of Dr. Elsayed’s assessed limitations.” AR at 24. The
14 ALJ cited to physical examination records and MRI reports, which “[did] not suggest that
15 plaintiff must be prone for half of the day.” *Id.* Additionally, the ALJ found Dr. Elsayed’s
16 own clinical notes did not validate the severity of the assessed limitations, “insofar as he
17 noted [plaintiff’s] absence of weakness and generally improved or stable physical
18 condition.” *Id.* at 24.

19 Plaintiff contends that the ALJ is not qualified to interpret raw medical data from
20 MRI reports to make a functional assessment. Doc. No. 8 at 21. It is true that “as a lay
21 person, an ALJ is . . . not qualified to interpret raw medical data” to make a functional
22 assessment, and that the ALJ’s RFC must be supported by a “medical assessment.” *See*
23 *Padilla v. Astrue*, 541 F. Supp. 2d 1102, 1106 (C.D. Cal. Feb. 21, 2008) (internal quotations
24 and citations omitted). That requirement is satisfied in this case. At the outset of the RFC
25 assessment, the ALJ cited objective medical evidence that conflicted with Dr. Elsayed’s
26 opinion, including medical records which generally showed unremarkable, mild, and/or
27 normal findings and examinations. *See* AR at 22-23. The ALJ also gave significant weight
28 to the opinion of a medical expert, Dr. Goldstein, who reviewed plaintiff’s entire medical

1 record and offered opinions as to plaintiff's postural activities and manipulative
2 movements. *Id.* at 22-25. The ALJ gave Dr. Goldstein's opinion significant weight because
3 it was consistent with the medical evidence of record. *Id.* at 24-25; *see Salee v. Chater*, 94
4 F.3d 520, 522 (9th Cir. 1996) (noting that "the findings of a nontreating, nonexamining
5 physician can amount to substantial evidence, so long as other evidence in the record
6 supports those findings") (citation omitted). By identifying evidence that undermined Dr.
7 Elsayed's disability opinion and describing how the evidence supported Dr. Goldstein's
8 opinion and not Dr. Elsayed's opinion, the ALJ met his obligation to offer specific,
9 legitimate reasons for rejecting Dr. Elsayed's opinion. *See Batson*, 359 F.3d at 1195
10 (affirming ALJ's decision giving minimal weight to treating physician's opinion, in part,
11 because opinion not supported with objective evidence, it was contradicted by other
12 evidence, and opinion based on plaintiff's subjective complaints); *see also Tonapetyan v.*
13 *Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (upholding ALJ's rejection of treating
14 physician's opinion because it lacked objective evidence to support diagnoses).
15 Accordingly, plaintiff is not entitled to remand on this ground.

16 **VI. CONCLUSION**

17 For the reasons stated herein, the Court finds the ALJ's decision is supported by
18 substantial evidence and free of legal error. Accordingly, **IT IS HEREBY ORDERED**
19 that the ALJ's decision is **AFFIRMED**. The Clerk of Court shall enter Judgment
20 accordingly.

21 **IT IS SO ORDERED.**

22 Dated: May 10, 2022



23
24 Hon. Karen S. Crawford
25 United States Magistrate Judge
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