

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

Wescott v. Commissioner of Social Security

No. 1:21-cv-01323-BAM (E.D. Cal. Mar. 6, 2025) · No. 1:21-cv-01323-BAM · Decided March 6, 2025

OPINION

(SS) Wescott v. Commissioner of Social Security

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 KAREN P. WESCOTT, Case No. 1:21-cv-01323-BAM 12 Plaintiff, ORDER REGARDING
13 PLAINTIFF'S

14 MOTION FOR SUMMARY JUDGMENT

15 16 v. AND DEFENDANT'S CROSS-MOTION

17 FOR SUMMARY JUDGMENT

18 19 COMMISSIONER OF SOCIAL

20 SECURITY, (Docs. 15, 23) 21 Defendant. 22 16

23 24 INTRODUCTION

25 Plaintiff Karen P. Wescott ("Plaintiff") seeks judicial review of a final decision of the 26
27 Commissioner of Social Security ("Commissioner") denying her application for disability 28
29 insurance benefits under Title II of the Social Security Act. The matter is currently before the 30
31 Court on the parties' briefs, which were submitted, without oral argument, to Magistrate Judge 32
33 Barbara A. McAuliffe.¹ 34 23 Having considered the briefing and record in this matter, the Court
35 finds that the decision 36 of the Administrative Law Judge ("ALJ") is supported by substantial
37 evidence in the record as a 38 whole and based upon proper legal standards. Accordingly, this
39 Court will deny Plaintiff's 40 motion for summary judgment, grant the Commissioner's cross-
41 motion for summary judgment, 42 1 The parties consented to have a United States Magistrate
43 Judge conduct all proceedings in this case, 44 including entry of final judgment, pursuant to 45
46 U.S.C. § 636(c). (Docs. 4, 6, 7.) 47 1 and grant the Commissioner's request to affirm the agency's
48 determination to deny benefits.

49 2 FACTS AND PRIOR PROCEEDINGS

50 3 Plaintiff filed an application for disability insurance benefits on July 1, 2019. AR 154- 4 60.2
51 Plaintiff alleged she became disabled on July 1, 2018, due to total double hip replacement, 5 right
52 total knee replacement, left knee needing total knee replacement, lower back problems, 6
53 migraines, joint pain in the hands, and difficulty standing or walking. AR 174-75. Plaintiff's 7

applications were denied initially and on reconsideration. AR 79-83, 90-93. Subsequently, 8 Plaintiff requested a hearing before an ALJ, and following a hearing, ALJ Brian Crockett issued 9 an order denying benefits on January 13, 2021. AR 12-25, 30-52. Thereafter, Plaintiff sought 10 review of the decision, which the Appeals Council denied, making the ALJ's decision the 11 Commissioner's final decision. AR 1-5. This appeal followed. 12 Relevant Hearing Testimony 13 ALJ Crockett held a telephonic hearing on December 16, 2020. Plaintiff appeared with 14 her attorney, Shellie Lott. Larry Bell, an impartial vocational expert, also appeared. AR 32. 15 Plaintiff testified that she lives with her husband in a tri-level home. AR 37. She has a 16 driver's license and, in a typical week, drives once a week to the grocery store. She usually 17 spends 30 minutes in the store. She gets little stuff and will wait for her husband or daughter to 18 help with the big shopping. She is a high school graduate and can read, write, and perform simple 19 math. AR 37-38. 20 Plaintiff testified that she receives a retirement pension, along with health insurance. She 21 has not worked since she retired from the State of California. AR 39. She worked in the 22 Department of Corrections accounting unit, taking care of inmate accounts and customer service, 23 distributing payroll checks twice a month to employees. AR 39-40. On a typical day, she would 24 spend about four hours a day on her feet during an eight-hour shift. AR 40. The heaviest amount 25 she lifted was probably 25 pounds. AR 40. When asked by the vocational expert, Plaintiff 26 confirmed, however, that she was sitting six of eight, lifting 25 pounds infrequently, occasional 27 2 References to the Administrative Record will be designated as "AR," followed by the appropriate page 28 number. 1 files. AR 40. When later asked what percentage of the day she was standing up or walking, 2 Plaintiff testified that at certain times of the month she was on her feet more and certain times of 3 the month she was sitting more, maybe 75 percent. AR 41. She testified that people would come 4 to the counter, and she would have to leave her desk, get up and walk to the counter. She could 5 not control when she would get up to go help. "It was whenever somebody came in. . . [s]o that 6 could be any time during the day." AR 41-42. 7 When asked about her medical issues, Plaintiff testified that walking causes her the most 8 pain. Her knees and hips are unstable when she walks. She feels like she is going to fall and uses 9 a cane all the time. She first started using a cane in 2015. She sometimes uses it in the house, but 10 most times just when she is outside. She has difficulty using stairs. There are plans for further 11 surgery on her left knee, for a knee replacement. AR 42-43. She can walk about 100 feet. She 12 has difficulty with sitting for long periods. If she sits for more than half an hour, then her legs 13 start to get antsy, and she needs to get up and move around. She needs to lie down a lot of time to 14 take the pressure off her back and legs. AR 43. She will lie down two or three times a day. AR 15 44. 16 When asked what she thought was her main problem returning to her past work, Plaintiff 17 testified it was the pressure of having to be there and performing the job in pain. AR 44. Plaintiff 18 testified that her hands cause her difficulty. With her arthritis, her thumbs are forming into her 19 palms, so it is hard for her to hold and grip things. It is hard for her to write and hold a pencil. 20 AR 44. She also has weakness on her left side. When she gets migraines, her

whole left side 21 goes numb, her face and her left arm. AR 44-45. She gets migraines about two or three times a 22 week lasting two or three hours. Plaintiff additionally has a diagnosis of obstructive sleep apnea. 23 She does not sleep well, and has to get up and down all night to readjust. AR 45. 24 Following Plaintiff's testimony, the ALJ elicited testimony from the vocational expert 25 ("VE"). At the outset, the VE testified that Plaintiff's past work was "best described as payroll 26 clerk, sedentary, semi-skilled, SVP 4, 215.382-014." AR 47. The ALJ also asked the VE 27 hypothetical questions. For the first hypothetical, the ALJ asked the VE to assume an individual 28 of Plaintiff's age, education, and work experience, who is capable of performing sedentary work 1 as defined by the regulations, and has the following additional limitations: could perform all 2 postural movements no more than occasionally; could never climb ladders, ropes, and scaffolds; 3 handling with the right extremity limited to frequent; should avoid concentrated exposure to 4 extreme cold, vibrations and hazards such as unprotected heights or unshielded moving 5 mechanical parts; would need a sit/stand option, which would allow them to briefly, up to two 6 minutes, alternate between the sitting or standing position at 30-minute intervals throughout the 7 workday without breaking the task at hand. AR 47. The VE testified that this individual could 8 perform Plaintiff's past work. AR 48. 9 For the second hypothetical, the ALJ asked the VE to assume the same limitations as the 10 first hypothetical, but reduce the handling limitations to occasional handling with the right upper 11 extremity. The VE testified that this individual could not perform claimant's past work. AR 48. 12 The VE also testified that if an employee reaches a level of missing two or more days per 13 month, the supervisory personnel would attempt an intervention to correct that, and if the 14 intervention proved to be unsuccessful, it would result in termination. AR 48. The VE further 15 testified that if an employee reached a level of being off task ten percent or more of the time, this 16 would eliminate competitive work at any level, including Plaintiff's prior work. AR 48-49. 17 In response to questions from Plaintiff's attorney, the VE testified that Plaintiff's past 18 work, where for 25 percent of the day she was doing customer service, would not be considered a 19 composite position, because it would be part of other duties as assigned. When asked how an 20 individual with a sit/stand option for 30-minute intervals up to two minutes at time could remain 21 on task, the VE testified that if 25 percent of the job varying intermittently throughout the day 22 was standing, it would probably take care of it. When asked whether the payroll clerk as 23 generally performed required getting up to go to the counter to help customers, the VE testified 24 the description did not say anything specifically. AR 50-51. 25 Medical Record 26 The medical record was reviewed by the Court and will be referenced below as necessary 27 to this Court's decision. 28 The ALJ's Decision 1 On January 13, 2021, using the Social Security Administration's five-step sequential 2 evaluation process, the ALJ determined that Plaintiff was not disabled under the Social Security 3 Act. AR 12-25. Specifically, the ALJ found that Plaintiff had not engaged in substantial gainful 4 activity since July 1, 2018, her alleged onset date. AR 18. The ALJ identified the following 5 severe impairments: status/post right knee arthroscopy; left knee osteoarthritis; lumbar 6

degenerative disc disease; obstructive sleep apnea; obesity; and carpal tunnel syndrome. AR 18. 7 The ALJ determined that Plaintiff did not have an impairment or combination of impairments that 8 met or medically equaled any of the listed impairments. AR 18-19. 9 Based on a review the entire record, the ALJ found that Plaintiff had the residual 10 functional capacity (“RFC”) to perform sedentary work, except with the following limitations: no 11 climbing ladders, ropes, or scaffolds; could perform all other postural movements occasionally; 12 could frequently handle with the right upper extremity; must avoid concentrated exposure to 13 extreme cold, vibrations, and hazards, such as unprotected heights and dangerous moving 14 mechanical parts; and required a sit/stand option which allow her to briefly, for up to 2 minutes, 15 alternate between sitting or standing at 30 minutes intervals throughout the day without breaking 16 the task at hand. AR 19-24. With this RFC, the ALJ determined that Plaintiff was capable of 17 performing her past relevant work as a payroll clerk as generally performed. AR 24-25. The ALJ 18 therefore concluded that Plaintiff had not been under a disability from July 1, 2018, through the 19 date of the decision. AR 25.

20 SCOPE OF REVIEW

21 Congress has provided a limited scope of judicial review of the Commissioner’s decision 22 to deny benefits under the Act. In reviewing findings of fact with respect to such determinations, 23 this Court must determine whether the decision of the Commissioner is supported by substantial 24 evidence. 42 U.S.C. § 405(g). Substantial evidence means “more than a mere scintilla,” 25 *Richardson v. Perales*, 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v. 26 Weinberger*, 514 F.2d 1112, 1119, n. 10 (9th Cir. 1975). It is “such relevant evidence as a 27 reasonable mind might accept as adequate to support a conclusion.” *Richardson*, 402 U.S. at 401. 28 The record as a whole must be considered, weighing both the evidence that supports and the 1 evidence that detracts from the Commissioner’s conclusion. *Jones v. Heckler*, 760 F.2d 993, 995 2 (9th Cir. 1985). In weighing the evidence and making findings, the Commissioner must apply the 3 proper legal standards. E.g., *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988). This 4 Court must uphold the Commissioner’s determination that the claimant is not disabled if the 5 Commissioner applied the proper legal standards, and if the Commissioner’s findings are 6 supported by substantial evidence. See *Sanchez v. Sec’y of Health and Human Servs.*, 812 F.2d 7 509, 510 (9th Cir. 1987).

8 REVIEW

9 In order to qualify for benefits, a claimant must establish that he or she is unable to engage 10 in substantial gainful activity due to a medically determinable physical or mental impairment 11 which has lasted or can be expected to last for a continuous period of not less than twelve months. 12 42 U.S.C. § 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental 13 impairment of such severity that he or she is not only unable to do his or her previous work, but 14 cannot, considering his or her age, education, and work experience, engage in any other kind of 15 substantial gainful work which exists in the national economy. *Quang Van Han v. Bowen*, 882

16 F.2d 1453, 1456 (9th Cir. 1989). The burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990).

18 DISCUSSION

19 Plaintiff argues that the ALJ erred in the following ways: (1) concluding that she could 20 perform her past relevant work as generally performed because her prior work was a composite 21 job; (2) concluding that the opinion of her treating orthopedist, Dr. Sablan, was not persuasive; 22 (3) failing to provide acceptable reasons for discounting Plaintiff's subjective complaints; and (4) 23 failing to address lay evidence from Plaintiff's family members. 24 A. Step Four – Past Relevant Work

25 Plaintiff challenges the ALJ's step four finding that she could perform her past relevant 26 3 The parties are advised that this Court has carefully reviewed and considered all of the briefs, including 27 arguments, points and authorities, declarations, and/or exhibits. Any omission of a reference to any specific argument or brief is not to be construed that the Court did not consider the argument or brief. 28 1 work as a payroll clerk (sedentary) as it is generally performed in the national economy. (Doc. 2 15-1 at 18.) She argues that the ALJ erred because the "evidence of record documents that [she] 3 performed a composite job as a payroll clerk which entailed not only sedentary duties, as the ALJ 4 found, but also light duties as well." (Id.) Plaintiff contends that because she was not able to 5 perform that part of her duties at the light exertional level, the ALJ's finding that she could 6 "perform her past relevant work as payroll clerk 'as generally performed' cannot be sustained." 7 (Id.) In short, Plaintiff asserts that her job as a payroll clerk is appropriately characterized as a 8 composite job, which cannot support past work as generally performed.4 9 At step four, a claimant has the burden to prove that she cannot perform her past relevant 10 work "either as actually performed or as generally performed in the national economy." *Stacy v. Colvin*, 825 F.3d 563, 569 (9th Cir. 2016) (quoting *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th

12 Cir. 2002)); *Pinto v. Massanari*, 249 F.3d 840, 844 (9th Cir. 2001) Although the burden of proof 13 lies with the claimant, the ALJ must still make the requisite factual findings to support the step- 14 four conclusion. *Pinto*, 249 F.3d at 844. 15 To determine how a claimant actually performed her work, an ALJ may consider: "(1) the 16 claimant's own testimony, and (2) a properly completed vocational report." *Thomas v. Kijakazi*,

17 No. 1:22-cv-00200-HBK, 2023 WL 6164087, at *4 (E.D. Cal. Sept. 21, 2023) (quoting *Lewis*, 18 281 F.3d at 1083). To determine the requirements of occupations as generally performed in the 19 national economy, the ALJ may rely on VE testimony or consider information in the Dictionary 20 of Occupational Titles ("DOT"). See *Mejia D. v. O'malley*, No. 2:22-cv-07336-PD, 2024 WL 21 776580, at *4 (C.D. Cal. Feb. 26, 2024) (citing SSR 00–4P, 2000 WL 1898704, at *2 (Dec. 4, 22 2000) and SSR 82–61, 1982 WL 31387, at *2 (Jan. 1, 1982)); *Thomas*, 2023 WL 6164087, at *4. 23 "When a job is a 'composite' — that is, it has significant elements of two or more occupations 24 and therefore has no counterpart in the DOT — the ALJ considers only whether the claimant can 25 perform his past relevant work as actually performed." *Jesus P. v. Berryhill*,

No. EDCV 17- 26 4 Plaintiff also argues that the ALJ's finding that Plaintiff could perform this work "as actually performed" 27 cannot be based on substantial evidence. (Doc. 15-1 at 18.) Plaintiff's argument is not well founded because the ALJ only determined that Plaintiff could perform her past relevant work "as it is generally 28 performed," and made no finding that she could perform that work as actually performed. AR 24-25. 1 1633-JPR, 2019 WL 134552, at *3 (C.D. Cal. Jan. 8, 2019). Indeed, courts in the Ninth Circuit 2 have determined when "the job at issue [i]s a composite job, the ALJ [is] precluded from finding 3 that plaintiff could perform the position as it was generally performed in the national economy." 4 Thomas, 2023 WL 6164087, at *6 (quoting *De Romero v. Berryhill*, No. 1:17-cv-01508-JLT, 5 2019 WL 93273, at *10 (E.D. Cal. Jan 3, 2019)). 6 The parties dispute whether Plaintiff's past work should have been considered a 7 composite job. As noted above, work constitutes a composite job when it has significant 8 elements of two or more occupations and thus has no counterpart in the DOT. *Goodwill v. 9 Comm'r of Soc. Sec.*, No. 1:22-cv-01017-EPG, 2023 WL 3582521, at *2 (E.D. Cal. May 22, 10 2023) (citation omitted); *Jesus P.*, 2019 WL 123552, at *3. "The Ninth Circuit has not 11 established a bright-line rule for what constitutes 'significant elements' or 'main duties' of work 12 so as to find a composite job." *Goodwill*, 2023 WL 3582521, at *2; see also *McCullough v. 13 O'Malley*, No. CV 23-00298 JMS-KJM, 2024 WL 1209479, at *7 (D. Haw. Mar. 21, 2024) 14 (noting no Ninth Circuit bright-line rule for what constitute "significant elements" or "main 15 duties" of a job to categorize it as composite). "However, district courts generally consider the 16 'fundamental nature' of the work at issue, focusing on how much time a plaintiff spends doing the 17 tasks claimed to support a composite-job finding." *Goodwill*, 2023 WL 3582521, at *2. 18 (collecting cases). 19 According to the record, Plaintiff worked as an accounting technician at the California 20 Department of Corrections from June 1999 to March 2005 and as account trainee at Valley State 21 Prison from March 2005 to July 2018. AR 184. In her work history report, Plaintiff indicated 22 that she performed the same duties in both jobs, which included processing employee payroll, 23 processing inmate money transactions, researching inmate accounts for errors and corrections, 24 employee customer service, phone contact, and computer use. AR 185-86. She estimated that 25 she would walk about 2 hours, stand about 2 hours, and sit about 6 hours each day. 26 5 Plaintiff's attorney asked her about the total number of hours spent sitting and standing in her work 27 history report. The exchange was as follows: 28 Q Okay just follow-up on the sitting and standing. The form you filled out says 1 At the hearing, Plaintiff testified that in her job in accounting at the Department of 2 Corrections she took care of inmates' accounts and used the department program for the 3 accounting unit. AR 39-40. She also did customer service, distributing payroll checks twice a 4 month. AR 40. She explained that when people would come to the counter, she would have to 5 leave her desk, get up and walk to the counter, and then hand out paychecks. Also "whenever 6 problems they need with inmates, we would then have to go to the files and look at the files and 7 be moving around." AR 41. Plaintiff initially stated that on a typical day she would spend about 8 four hours a day "up and down" on

her feet during an eight-hour shift and would lift 25 pounds at 9 the heaviest. AR 40. However, in response to questioning from the VE, Plaintiff confirmed that 10 she spent six hours sitting and only lifted 25 pounds infrequently, occasional files. 6 AR 40. 11 The VE subsequently characterized Plaintiff's past relevant work as a "payroll clerk, 12 sedentary." AR 47. The ALJ then propounded a hypothetical, and the VE testified that the 13 individual would be able to perform Plaintiff's past relevant work. AR 47-48. Based on the 14 testimony of the VE, the ALJ found at step four that Plaintiff was able to perform her past 15 relevant job as a payroll clerk as it is generally performed. AR 24-25. 16 Plaintiff argues that because a substantial part of her job with the Department of 17 Corrections involved customer service duties performed at the light level, her work was a 18 composite job, and thus the ALJ erred by finding that she could return to her past job as generally 19 sitting for six hours, walking for two and standing for two. So that would add up to ten 20 hours a day. Were you working ten-hour days? 21 A Sometimes we did, but not very often. 22 Q Okay. So what would you say what was the percentage of the day that you were 23 standing up or walking? 24 A I would say – it's so hard because each day was different. Certain times of the month we were on our feet more and certain times of the month we were sitting more. I 25 would say maybe 75 percent. I don't know. It's hard for me to really say. 26 AR 41. 27 6 "ALJ: Mr. Bell, do you have any questions about her past work? VOCATIONAL EXPERT: Yeah, I did. My note from the file indicated she was sitting six of eight, and the lifting was 25 pounds 28 infrequently, occasional files. Is that not accurate? THE WITNESS: Yes, that's accurate." AR 40. 1 performed in the national economy. (Doc. 15-1 at 22.) The Commissioner counters that the ALJ 2 properly found that Plaintiff could perform her prior work as a payroll clerk as generally 3 performed. Specifically, the Commissioner asserts that (1) the ALJ reasonably relied on the VE's 4 testimony that her prior work was not a composite job, and (2) there is no indication that Plaintiff 5 performed any other duty more than she performed her payroll clerk duties. (Doc. 23 at 7-8.). 6 The Court agrees with the Commissioner. 7 First, in response to questioning by Plaintiff's attorney, the VE expressly testified that 8 Plaintiff's work as a payroll clerk was not a composite job. AR 48. The ALJ was entitled to rely 9 on the testimony of the VE. Thomas 2023 WL 6164087, at *6 ("It was reasonable for the ALJ to 10 rely on the "inherently reliable" explicit testimony of the vocational expert that Plaintiff's job 11 was not composite with stocking or inventory work."). 12 Second, while Plaintiff attempts to create an ambiguity regarding the amount of time 13 Plaintiff spent on her feet standing or walking, the record reflects Plaintiff's own verification to 14 the VE that she spent six hours of an eight-hour day (or 75% of the day) sitting and only lifted 25 15 pounds infrequently, occasional files. AR 40. This is consistent not only with testimony 16 indicating Plaintiff spent 75% of her day sitting (see AR 41), but also with her attorney's 17 recognition at the hearing that Plaintiff spent only 25% of her day performing customer service 18 duties. 7 AR 49. Because the fundamental nature of Plaintiff's work was time spent as a payroll 19 clerk, the ALJ's decision to designate Plaintiff's past work as payroll clerk without finding a 20 composite job (AR 24) is supported by substantial evidence.

See Stacy, 825 F.3d at 570 (“When 21 Stacy performed that job, he engaged in supervisory duties 70-75 percent of the time. The fact 22 7 Plaintiff’s counsel questioned the VE as follows: 23 Q Okay. So assuming that the claimant performed her past work. For 25 percent 24 of the day she was doing the customer service, the aspect where people would come to 25 the window, and she would have to go up and help them, would that be considered a composite position? 26 A No, I don’t believe so. I mean, that would be part of other duties as assigned. 27 AR 49 (emphasis added). 28 1 that his employer also required him to occasionally do other, non-supervisory tasks does not 2 change the fundamental nature of his work.”); *Elias v. Comm’r of Soc. Sec. Admin.*, No. CV-18- 3 00200-TUC-RCC (DTF), 2019 WL 4296779, at *2 (D. Ariz. Sept. 11, 2019) (“The data entry 4 work, being 70%, was the fundamental nature of the work. So, there is substantial evidence that 5 the job listed by the VE and that used in by the ALJ were equivalent as generally performed). 6 Plaintiff argues that the ALJ could not define her past relevant work according to its least 7 demanding function, i.e., payroll clerk performed at the sedentary level, and that her customer 8 service duties performed at the light level constituted “a very significant--and even the majority 9 share--of her duties.” (See Doc. 24 at 5; Doc. 15-1 at 19-20.) To support this argument, Plaintiff 10 relies primarily on *Valencia v. Heckler*, 751 F.2d 1082, 1086 (9th Cir. 1985), and *Carmickle v. 11 Commissioner of Social Security Administration*, 533 F.3d 1155, 1166 (9th Cir. 2008), which 12 provide that an ALJ may not define past relevant work according to its “least demanding 13 function.” However, *Valencia* and its progeny do not apply when “the least demanding function 14 is a task the claimant actually performed most of the time; and (2) the DOT defines the 15 claimant’s past job as requiring only that least demanding function.” Stacy, 825 F.3d at 570 16 (concluding that ALJ properly categorized plaintiff’s past work as “supervisor” when 17 supervisory duties constituted 70 to 75 percent of job and the DOT classified the past job as 18 purely supervisory). In this case, the DOT classifies Plaintiff’s past job as sedentary work 19 involving the compilation of payroll data, entering data, and maintaining payroll records. Per the 20 DOT, a payroll clerk: 21 Compiles payroll data, and enters data or computes and posts wages, and reconciles errors, to maintain payroll records, using computer or calculator and is 22 described as sedentary work. Compiles payroll data, and enters data or computes and posts wages, and reconciles errors, to maintain payroll records, using 23 computer or calculator: Compiles payroll data, such as hours worked, sales or piecework, taxes, insurance, and union dues to be withheld, and employee 24 identification number, from time sheets and other records. Prepares computer input forms, enters data into computer files, or computes wages and deductions, 25 using calculator, and posts to payroll records. Reviews wages computed and corrects errors to ensure accuracy of payroll. Records changes affecting net 26 wages, such as exemptions, insurance coverage, and loan payments for each employee to update master payroll records. Records data concerning transfer of 27 employees between departments. May prorate expenses to be debited or credited to each department for cost accounting records. May prepare periodic reports of 28 earnings, taxes, and deductions. May keep records of leave pay and nontaxable 1

wages. May prepare and issue paychecks. 2 DOT 215.382-014 Payroll Clerk, 1991 WL 671908. Plaintiff performed her sedentary tasks as 3 payroll clerk more than half the time and for 75% of the day. The ALJ therefore did not err in 4 classifying Plaintiff's past work. 5 To the extent Plaintiff argues that her job should have been defined as composite because 6 the performance of customer service duties was not referenced anywhere in the DOT description 7 of payroll clerk (see Doc. 24 at 5-6), this argument is not persuasive. A "particular job does not 8 become composite merely because, as actually performed, the particular job included tasks not 9 generally performed in such a job." *Goodwill*, 2023 WL 3582521, at *2 (quoting *Laurie A. M. v. 10 Kijakazi*, No. ED CV 21-1958-ODW(E), 2022 WL 2610246, at *4 (C.D. Cal. July 8, 2022)). 11 B. Physician Opinion 12 Plaintiff challenges the ALJ's evaluation of the opinion from Dr. Mario Sablan, Plaintiff's 13 treating orthopedist. (Doc. 15-1 at 23-27.) 14 Because Plaintiff applied for benefits after March 27, 2017, her claims are governed by 15 the agency's new regulations concerning how an ALJ must evaluate medical opinions. 20 C.F.R. 16 § 404.1520c. Under these regulations, the Commissioner does "not defer or give any specific 17 evidentiary weight, including controlling weight, to any medical opinion(s) or prior 18 administrative medical finding(s), including those from [a claimant's] medical sources." 20 19 C.F.R. § 404.1520c(a). The Commissioner evaluates the persuasiveness of the medical opinions 20 based on the following factors: (1) supportability; (2) consistency; (3) relationship with the 21 claimant; (4) specialization; and (5) other factors, such as "evidence showing a medical source 22 has familiarity with the other evidence in the claim or an understanding of our disability 23 program's policies and evidentiary requirements." 20 C.F.R. § 404.1520c(c)(1)-(5). 24 Supportability and consistency are the most important factors. 20 C.F.R. § 404.1520c(b)(2). 25 Supportability means the extent to which a medical source supports the medical opinion by 26 explaining the "relevant ... objective medical evidence." 20 C.F.R. § 404.1520c(c)(1); see also 27 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). Consistency means the extent to which a 28 1 medical opinion is "consistent ... with the evidence from other medical sources and nonmedical 2 sources in the claim." 20 C.F.R. § 404.1520c(c)(2); *Woods*, 32 F.4th at 792. The Ninth Circuit 3 has clarified that "under the new regulations, an ALJ cannot reject an examining or treating 4 doctor's opinion as unsupported or inconsistent without providing an explanation supported by 5 substantial evidence." *Woods*, 32 F.4th at 792 "The agency must 'articulate ... how persuasive' it 6 finds 'all of the medical opinions' from each doctor or other source, . . . and 'explain how [it] 7 considered the supportability and consistency factors' in reaching these findings." *Id.* (internal 8 citations omitted). 9 Dr. Sablan's Opinion 10 On February 10, 2020, Dr. Sablan completed a Medical Source Statement. AR 357-58. 11 Dr. Sablan identified positive clinical signs, which included reduced range of motion (decreased 12 extension), abnormal gait, muscle spasm, muscle weakness, weight change, swelling, and 13 tenderness. He opined that Plaintiff could lift and carry 10 pounds occasionally, could stand 14 and/or walk 1 hour in an 8-hour day, could stand and/or walk without interruption for 20 minutes, 15 could sit 2 hours in an 8-hour day, could never bend,

climb, crouch, kneel, or crawl, could 16 occasionally balance and stoop, could frequently reach, handle, feel, and finger, could 17 occasionally push/pull, flex her neck/head forward, tilt her head back, and turn her neck/head 18 from side to side. Dr. Sablan further opined that Plaintiff would need extra rest periods after 19 every half hour for 10 minutes. AR 357. She had neuro-anatomic distribution of pain, and her 20 reports of pain/fatigue were consistent with her condition. Dr. Sablan also opined that in a typical 21 8-hour workday, Plaintiff's symptoms were likely severe enough to interfere with attention and/or 22 concentration needed to perform even simple repetitive tasks 50% of the time. Plaintiff's 23 impairments also were likely to produce good days and bad days, and she would likely be absent 24 as a result of her impairments or treatment about 4 days per month. AR 358. 25 The ALJ found Dr. Sablan's medical source statement "not persuasive" because it was "an 26 exaggeration of the claimant's limitations and inconsistent with the record." AR 24. The ALJ 27 explained this conclusion, stating as follows: 28 Dr. Sablan opined that the claimant's maximum lifting is 10 pounds, maximum 1 standing is 1 hour only, maximum sitting is 2 hours, and that the claimant can never bend, crouch, climb, kneel, or crawl. He also opined to significant 2 manipulative limitations and opined that the claimant cannot concentrate any more than 50% of the time due to pain and would miss more than 4 days of work 3 a month. Such limitations are clearly overstated, as they are inconsistent with his own physical examination findings, which show some evidence of tenderness, 4 decreased range of motion, and an antalgic gait, but show no evidence of any decreased strength, decreased sensations, or pain complaints so significant as to 5 preclude the ability to concentrate in anyway. Moreover, he fails to consider the claimant's significant improvement after her right knee surgery and her own 6 report to the consultative examiner that she is able to perform light activities of daily living. He provides no specific explanation for such restrictive standing or 7 sitting limitations and such limitations are inconsistent with the physical examinations throughout the record. 8 AR 24. 9 As to supportability, the ALJ should consider the extent to which a medical source 10 supports his own opinion and explains the objective medical evidence. C.F.R. § 404.1520c(c)(1); 11 see also Gary P. v. O'Malley, No. 3:23-cv-00563-AHG, 2024 WL 1376491, at *7 (S.D. Cal. Mar. 12 29, 2024) ("Supportability examines the relevant objective medical evidence and supporting 13 explanations presented by the source."). Here, the ALJ found that Dr. Sablan "provide[d] no 14 specific explanation for [the] restrictive standing or sitting limitations." AR 24. Although it is not 15 stated explicitly by the ALJ, this reasoning implicates the supportability factor as it relates to the 16 supporting explanations presented by the medical source. 20 C.F.R. § 404.1520c(c)(1). Dr. 17 Sablan's opinion was on a check-the-box-form and included no narrative explanation regarding 18 the opined standing or sitting limitations. AR 357-58. An "ALJ may permissibly reject check-off 19 reports that do not contain any explanation of the bases of their conclusions." Ford v. Saul, 950 20 F.3d 1141, 1155 (9th Cir. 2020) (citations omitted). 21 Plaintiff points out that Dr. Sablan identified positive clinical findings in support of the 22 limitations, including reduced range of motion (decreased extension); abnormal gait; muscle 23 spasm; muscle weakness; weight change;

swelling; and tenderness. (Doc. 15-1 at 24). However, 24 the ALJ found Dr. Sablan's opined limitations "inconsistent with his own physical examination 25 findings, which show[ed] some evidence of tenderness, decreased range of motion, and an 26 antalgic gait, but show[ed] no evidence of any decreased strength, decreased sensations, or pain 27 28 1 complaints so significant as to preclude the ability to concentrate in anyway."8 AR 24. For 2 example, Dr. Sablan's treatment notes indicated that post-operatively from at least January 2019 3 through October 2020, Plaintiff's sensory and motor function of the lower extremities was grossly 4 normal and that from at least May 2019 through January 2020, she was able to participate in 5 normal activities of daily living. AR 21-23, 292-94, 297-300, 301-03, 341-44, 345-49; 350-55, 6 371-82. There was no evidence of decreased strength in the lower extremities. AR 23. 7 Additionally, the ALJ determined that Dr. Sablan's opinion failed to consider that Plaintiff 8 had significant improvement after her right knee surgery. AR 24. This determination is 9 supported by substantial evidence from Dr. Sablan's treatment records. See AR 338 [March 10 2019: "Basically, the patient feels that the knee function has returned to normal. The patient's 11 current activity level includes normal activities."].) It also comports with Plaintiff's own 12 admission of recovery from her right knee replacement. (See Doc. 15-1 at 25 ["Ms. Wescott may 13 have generally recovered from her right knee replacement, as the ALJ noted"]. 14 In challenging the ALJ's evaluation of Dr. Sablan's opinion, Plaintiff instead points to 15 increasing abnormalities of the left knee, but the cited treatment records do not suggest that 16 Plaintiff was as limited as stated in Dr. Sablan's February 2020 opinion. (Doc. 15-1 at 25, citing 17 AR 371-74.) The ALJ determined that while physical examinations showed some abnormalities 18 in Plaintiff's left knee, there was "nothing so severe, as to preclude a range of sedentary work." 19 AR 22. Plaintiff had some evidence of crepitus, a decreased range of motion, and some effusion, 20 but there was no evidence of any instability, muscle atrophy, decreased sensations, masses, or 21 decreased pulses. AR 22, citing 278-305 [no atrophy, no instability, no masses, sensory and 22 motor function grossly normal, normal pulses], 347-55 [no atrophy, no instability, no masses, 23 grossly normal sensory and motor function, normal pulses], 361-68, 371-82 [no atrophy, no 24 instability, no masses; sensory function grossly normal, normal pulses]. The ALJ also 25 acknowledged Plaintiff's antalgic gait, but found no evidence of a need for, or the persistent use 26 8 Although the ALJ described Dr. Sablan's opinion as "inconsistent" with his examination findings, the 27 ALJ plainly did not intend to make an inconsistency finding. The ALJ's meaning is clear from context as the ALJ examined the relevant objective medical evidence from Dr. Sablan, which speaks to the 28 supportability of the opinion. C.F.R. § 404.1520c(c)(1). 1 of, an assistive device. AR 22, citing 278- 304 [use of cane post-operatively], 338-55, 361-68 2 [ambulatory; prescribed custom orthotics], 371-82. 3 Plaintiff argues that there was record evidence in Dr. Sablan's treatment notes of hand 4 pain, decreased grip strength, decreased pinch strength, and decreased median nerve sensation. 5 (Doc. 15-1 at 26, citing AR 352.) However, there is no indication that such evidence had any 6 bearing on Dr. Sablan's opined sitting and

standing limitations, nor that the pain precluded 7 Plaintiff's ability to concentrate. To the extent Plaintiff references treatment notes from Dr. 8 Charlotte Vang (Doc. 15-1 at 26-27), those notes do not relate to the supportability of Dr. 9 Sablan's opinion; that is, they do not address the issue of whether Dr. Sablan's opined limitations 10 were supported by his own treatment notes. 11 As to consistency, the ALJ should explain the extent to which the limitations identified by 12 the medical source are inconsistent with other evidence in the record, including the opinions from 13 other medical sources and nonmedical evidence. See 20 C.F.R. § 404.1520c(c)(2); Woods, 32 14 F.4th at 792. The ALJ here found that Dr. Sablan's opinion was inconsistent with Plaintiff's own 15 report to the consultative examiner that she is able to perform light activities of daily living. AR 16 24. Plaintiff contends that this determination is not supported by substantial evidence. However, 17 Plaintiff reported to the consultative examiner that "[w]ith guarding of her joints she can slowly 18 complete her personal needs and perform light activities of daily living." AR 321. 19 Further, with respect to consistency, the ALJ indicated that Dr. Sablan's restrictive 20 standing or sitting limitations were inconsistent with the physical examinations throughout the 21 record. AR 24. For example, at the consultative examination in October 2019, only a few 22 months prior to Dr. Sablan's opinion, Plaintiff was able to walk to the examination room without 23 difficulty, sit comfortably, and slowly rise from the supine position. Her extremities were warm 24 without cyanosis, clubbing, or edema. AR 322. Plaintiff could tandem walk slowly, but needed 25 practice, and she was unable to toe-heel stand. Plaintiff did not use an assistive device. Her fine 26 finger dexterity was intact to alternating finger touch and handling small objects. She has 27 negative seated and supine straight leg raising. AR 323. She had no acute muscle spasms, 5/5 28 muscle strength throughout all four extremities, including grip, and intact deep tendon reflexes. 1 AR 324.

2 Based on the above, the Court finds that the ALJ properly evaluated the medical opinion 3 evidence and did not commit reversible error. 4 C. Subjective Complaints 5 Plaintiff argues that the ALJ erred in the evaluation of Plaintiff's subjective complaints. 6 (Doc. 15-1 at 30.) 7 In deciding whether to admit a claimant's subjective complaints, the ALJ must engage in a 8 two-step analysis. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014); *Batson v. Comm'r of 9 Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004). First, the claimant must produce objective 10 medical evidence of her impairment that could reasonably be expected to produce some degree of 11 the symptom or pain alleged. *Garrison*, 759 F.3d at 1014. If the claimant satisfies the first step 12 and there is no evidence of malingering, the ALJ may reject the claimant's testimony regarding 13 the severity of her symptoms only by offering specific, clear and convincing reasons for doing so.

14 *Id.* at 1015.

15 Here, the ALJ found that Plaintiff's medically determinable impairments could reasonably 16 be expected to cause the alleged symptoms, but discounted her statements concerning the 17 intensity, persistence and limiting effects of those symptoms. AR 21. The ALJ was therefore 18 required to provide specific, clear and convincing reasons for discounting Plaintiff's subjective 19

complaints. 20 The Court finds that the ALJ provided specific, clear and convincing reasons for 21 discounting Plaintiff's subjective complaints. First, the ALJ determined that the nature and 22 severity of Plaintiff's alleged pain and limitations were not supported by the objective medical 23 evidence. AR 21. Although lack of supporting medical evidence cannot form the sole basis for 24 discounting testimony, it is a factor that the ALJ can consider. See *Burch v. Barnhart*, 400 F.3d 25 676, 681 (9th Cir. 2005) (explaining "lack of medical evidence cannot form the sole basis for 26 discounting pain testimony"); *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc) 27 (concluding that "an adjudicator may not reject a claimant's subjective complaints based solely 28 on a lack of objective medical evidence to fully corroborate the alleged severity of pain"). In this 1 case, for example, the ALJ considered that with respect to her right knee, Plaintiff's symptoms 2 continued to improve after her right knee replacement, and subsequent to June 2019, there was no 3 evidence of any significant complaints or significant treatment related to her right knee condition. 4 AR 21. Additionally, the ALJ considered Plaintiff's reports of left knee pain, but noted that her 5 treatment was limited to left knee steroid injections, with evidence of improvement, no evidence 6 of any left knee physical therapy, emergency room visits, or surgery, and no evidence of any 7 abnormal left knee imaging studies. AR 21-22. With respect to Plaintiff's reported low back 8 pain, the ALJ observed that an MRI of the lumbar spine performed in August 2019 "showed only 9 minimal findings." AR 22, citing AR 384 (mild disc desiccation extending from L2-L3 through 10 L5-S1 with "anular bulging without subsequent central canal or neural foraminal narrowing"). 11 The ALJ additionally noted that there was "no evidence of significant treatment for lumbar pain, 12 such as spinal injections, emergency room care, physical therapy, or surgery. AR 22. With 13 respect to Plaintiff's reports of right wrist pain, the ALJ noted that an EMG performed on her 14 upper extremities in February 2020, "showed only 'borderline' median mononeuropathy across 15 the left wrist and normal median nerve findings with regard to the right wrist, with no evidence of 16 cervical radiculopathy or any ulnar radial neuropathy in the upper extremities." AR 23, citing AR 17 387-89. The ALJ also considered that since that time, there was "no evidence of any specific or 18 significant treatment such as physical therapy, injections, emergency room care, or surgery 19 related to any carpal tunnel syndrome type symptoms." AR 23. Notwithstanding that finding, the 20 ALJ accommodated Plaintiff's carpal tunnel syndrome by limiting her to sedentary lifting and 21 carrying, with additional right handling limitations. AR 23. 22 Second, the ALJ considered Plaintiff's ability to engage in her activities of daily living as 23 inconsistent with her testimony. AR 22. An ALJ can properly discount a claimant's subjective 24 complaints when the daily activities demonstrate an inconsistency between what the claimant can 25 do and the degree that disability is alleged. *Molina v. Astrue*, 674 F.3d 1104, 1112-1113 (9th Cir. 26 2021); *Burch*, 400 F.3d at 681 (concluding ALJ was permitted to consider daily living activities 27 in analysis of claimant's allegations). In this instance, the ALJ considered Plaintiff's report to the 28 1 consultative examiner that she was able to perform light activities of daily living, albeit slowly.9 2 AR 22, 321

(“she can slowly complete her personal needs and perform light activities of daily living”). Plaintiff contends that her report to the consultative examiner is not in any way inconsistent with her hearing testimony. (Doc. 15-1 at 32.) In so contending, however, Plaintiff herself cites testimony that she can only walk 50 feet before needing to sit down, she “has to lay down a lot of the time,” and it is hard for her to hold and grip things. (Id.) This testimony appears to be inconsistent with the ability to perform light activities of daily living, albeit slowly. Moreover, even where a claimant’s activities suggest some difficulty functioning, they may be grounds for discrediting the claimant’s testimony to the extent that they contradict claims of a totally debilitating impairment. *Molina*, 674 F.3d at 1113. Third, and as noted above, the ALJ considered the effectiveness of treatment related to Plaintiff’s reported knee pain and limitations, citing Plaintiff’s return to normal activities following her right knee replacement and evidence of improvement with cortisone injections to her left knee. AR 21. The effectiveness of medication or treatment is a relevant factor in determining the severity of a claimant’s symptoms. 20 C.F.R. § 404.1529(c)(3)(iv),(v); *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017) (“[E]vidence of medical treatment successfully relieving symptoms can undermine a claim of disability.”). D. Lay Witness Testimony Plaintiff additionally argues that the ALJ committed reversible error by failing to address third-party testimony from Plaintiff’s husband and two daughters, “which, if credited, corroborates [Plaintiff’s] testimony.” (Doc. 15-1 at 29.) “In determining whether a claimant is disabled, an ALJ must consider lay witness testimony concerning a claimant’s ability to work.” *Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2009) (quotation omitted). “[L]ay testimony as to a claimant’s symptoms or how an impairment affects ability to work is competent evidence . . . and therefore cannot be disregarded without comment.” *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006)). The ALJ additionally noted Plaintiff’s ability to participate in “normal activities” several months after her right knee replacement, and her reported normal activity levels despite experiencing low back pain. AR 21-22. As Plaintiff points out, the ALJ failed to articulate how he considered the lay testimony of Plaintiff’s husband and daughters. This was error. However, “an ALJ’s failure to comment upon lay witness testimony is harmless where ‘the same evidence that the ALJ referred to in discrediting [the claimant’s] claims also discredits [the lay witness’s] claims.’” *Molina v. Astrue*, 567 F.3d 1104, 1122 (9th Cir. 2012) (citation omitted). Here, Plaintiff has affirmed that the lay witness statements corroborated Plaintiff’s own testimony. “When a lay witness’s testimony is similar to a claimant’s subjective complaints, the ALJ’s analysis of the latter is equally available to the former.” *Mahnaz M. v. Kijakazi*, No. 22-9 CV-1729-BGS, 2024 WL 21794, at *8 (S.D. Cal. Jan. 2, 2024); see also *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009) (concluding that because “the ALJ provided clear and convincing reasons for rejecting [the claimant’s] own subjective complaints, and because [the lay witness’s] testimony was similar to such complaints, it follows that the ALJ also

13 gave germane reasons for rejecting [the lay witness's] testimony"). Because the ALJ provided
14 legally sufficient reasons to discount Plaintiff's subjective testimony, these reasons would
apply 15 equally to the lay witness testimony. Accordingly, any error in failing to consider the lay
witness 16 testimony is harmless as it was inconsequential to the ultimate nondisability
determination. See 17 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (identifying
"harmless error ... exists 18 when it is clear from the record that the ALJ's error was
inconsequential to the ultimate 19 nondisability determination") (internal quotation marks and
citation omitted).

20 CONCLUSION AND ORDER

21 For the reasons stated, the Court finds that the ALJ's decision is supported by substantial 22
evidence in the record as a whole and is based on proper legal standards. Accordingly, IT IS 23
HEREBY ORDERED as follows: 24 1. Plaintiff's motion for summary judgment (Doc. 15) is
denied. 25 2. The Commissioner's cross-motion for summary judgment and request to affirm 26
the agency's determination (Doc. 23) are granted. 27 /// 28 /// 1 2 3. The Clerk of this Court is
directed to enter judgment in favor of Defendant 3 Commissioner of Social Security, and against
Plaintiff Karen P. Wescott, and to close this case. 4 IT IS SO ORDERED. 5 6 Dated: March 6,
2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

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