

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

Monica Gutierrez Pedroza v. Commissioner of Social Security

Pedroza · No. 1:24-cv-00868-JLT-BAM · Decided July 25, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 MONICA GUTIERREZ PEDROZA, Case No. 1:24-cv-00868-JLT-BAM 12
Plaintiff, FINDINGS AND RECOMMENDATIONS REGARDING PLAINTIFF’S MOTION
FOR 13 v. SUMMARY JUDGMENT OR REMAND 14 COMMISSIONER OF SOCIAL (Docs.
12, 14) SECURITY, 15 Defendant. 16 17 Findings and Recommendations 18 INTRODUCTION
19 Plaintiff Monica Gutierrez Pedroza (“Plaintiff”) seeks judicial review of a final decision 20 of
the Commissioner of Social Security (“Commissioner”) denying her application for 21
supplemental security income under Title XVI of the Social Security Act.

The matter is currently 22 before the Court on the parties’ briefs, which were submitted without
oral argument, to 23 Magistrate Judge Barbara A. McAuliffe for the issuance of findings and
recommendations. 24 Having considered the briefing and record in this matter, the Court finds
that the decision 25 of the Administrative Law Judge (“ALJ”) is supported by substantial evidence
as a whole and is 26 based upon proper legal standards.

Accordingly, it will be recommended that Plaintiff’s motion 27 for summary judgment or remand
be denied, the Commissioner’s request to affirm the agency’s 28 determination to deny benefits be
granted, and that judgment be entered in favor of the 1 Commissioner of Social Security. 2
FACTS AND PRIOR PROCEEDINGS 3 Plaintiff filed an application for supplemental security
income on May 18, 2021.

AR 10, 4 263-65, 266-74.1 Plaintiff alleged she became disabled on April 30, 2018, due to high
blood 5 pressure, arthritis, and sciatic nerve. AR 315. Plaintiff’s application was denied initially
and on 6 reconsideration. AR 93-97, 112-16. Subsequently, Plaintiff requested a hearing before an
ALJ, 7 and following a hearing, ALJ Young Bechtold issued an order denying benefits on October
18, 8 2023.

AR 7-24, 37-54. Thereafter, Plaintiff sought review of the decision, which the Appeals 9 Council
denied, making the ALJ’s decision the Commissioner’s final decision. AR 1-5. This 10 appeal
followed. 11 Relevant Hearing Testimony and Medical Record 12 The relevant hearing testimony
and medical record were reviewed by the Court and will 13 be referenced below as necessary to
this Court’s decision.

14 The ALJ's Decision 15 On October 18, 2023, using the Social Security Administration's five-step sequential 16 evaluation process, the ALJ determined that Plaintiff was not disabled under the Social Security 17 Act. AR 7-24. Specifically, the ALJ found that Plaintiff had not engaged in substantial gainful 18 activity since May 18, 2021. AR 12.

The ALJ identified the following severe impairments: 19 lumbar degenerative disc disease; obesity; and hypertension. AR 12-13. The ALJ determined 20 that Plaintiff did not have an impairment or combination of impairments that met or medically 21 equaled any of the listed impairments. AR 13-14. Based on a review of the entire record, the 22 ALJ found that Plaintiff retained the residual functional capacity ("RFC") to perform medium 23 work, except she could occasionally climb ramps or stairs, but never climb ladders, ropes, or 24 scaffolds, could occasionally stoop, kneel, crouch, and crawl, and must avoid work in extremely 25 cold and/or damp environments.

AR 14-21. With this RFC, the ALJ determined that Plaintiff 26 was unable to perform any past relevant work, but there were other jobs in the national economy 27 1 References to the Administrative Record will be designated as "AR," followed by the 28 appropriate page number. 1 that she could perform, such as hand packer, packing machine operator, and assembler, 2 automobile.

AR 21-24. The ALJ therefore concluded that Plaintiff had not been under a 3 disability since May 18, 2021, the date the application was filed. AR 24. 4 SCOPE OF REVIEW 5 Congress has provided a limited scope of judicial review of the Commissioner's decision 6 to deny benefits under the Act.

In reviewing findings of fact with respect to such determinations, 7 this Court must determine whether the decision of the Commissioner is supported by substantial 8 evidence. 42 U.S.C. § 405(g). Substantial evidence means "more than a mere scintilla," 9 Richardson v. Perales, 402 U.S. 389, 402 (1971), but less than a preponderance. Sorenson v. 10 Weinberger, 514 F.2d 1112, 1119, n. 10 (9th Cir.

1975). It is "such relevant evidence as a 11 reasonable mind might accept as adequate to support a conclusion." Richardson, 402 U.S. at 401. 12 The record as a whole must be considered, weighing both the evidence that supports and the 13 evidence that detracts from the Commissioner's conclusion. Jones v. Heckler, 760 F.2d 993, 995 14 (9th Cir. 1985).

In weighing the evidence and making findings, the Commissioner must apply the 15 proper legal standards. E.g., Burkhardt v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988). This 16 Court must uphold the Commissioner's determination that the claimant is not disabled if the 17 Commissioner applied the proper legal standards, and if the Commissioner's findings are 18 supported by substantial evidence.

See *Sanchez v. Sec’y of Health and Human Servs.*, 812 F.2d 19 509, 510 (9th Cir. 1987). 20
REVIEW 21 In order to qualify for benefits, a claimant must establish that he or she is unable to
engage 22 in substantial gainful activity due to a medically determinable physical or mental
impairment 23 which has lasted or can be expected to last for a continuous period of not less than
twelve months.

24 42 U.S.C. § 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental 25
impairment of such severity that he or she is not only unable to do his or her previous work, but
26 cannot, considering his or her age, education, and work experience, engage in any other kind of
27 substantial gainful work which exists in the national economy. *Quang Van Han v. Bowen*, 882
28 F.2d 1453, 1456 (9th Cir.

1989). The burden is on the claimant to establish disability. *Terry v. 1 Sullivan*, 903 F.2d 1273,
1275 (9th Cir. 1990). 2 DISCUSSION2 3 Plaintiff argues that the ALJ’s RFC determination is not
supported by substantial evidence 4 because the ALJ failed in her duty to complete the record and
obtain an updated opinion of 5 Plaintiff’s physical RFC from an examining physician.

(Doc. 12 at 3.) Plaintiff also argues that 6 the ALJ failed to offer any reason for rejecting
Plaintiff’s subjective complaints. (*Id.*) 7 A. Residual Functional Capacity 8 Plaintiff appears to
argue that because the ALJ found the opinions of the consultative 9 examiner and state agency
physicians unpersuasive, the RFC is not supported by substantial 10 evidence.

(Doc. 12 at 5-6.) 11 To the extent Plaintiff is arguing that the RFC must mirror a medical opinion,
this 12 argument is not persuasive. An RFC “is the most [one] can still do despite [his or her] 13
limitations” and it is “based on all the relevant evidence in [one’s] case record,” rather than a 14
single medical opinion or piece of evidence. 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1) (“We 15
will assess your residual functional capacity based on all of the relevant medical in your case 16
record.”).

Indeed, “[t]he RFC need not mirror a particular opinion; it is an assessment formulated 17 by the
ALJ based on all relevant evidence.” *Ashlock v. Kijakazi*, No. 1:21-cv-01687-GSA, 2022 18 WL
2307594, at *3 (E.D. Cal. June 27, 2022); see *Gonzalez v. Kijakazi*, No. 1:21-cv-01676-SKO, 19
2023 WL 6164086, at *6 (E.D. Cal. Sept. 21, 2023) (“The nature of the ALJ’s responsibility is to
20 interpret the evidence of record, including medical evidence.”); *Mills v. Comm’r of Soc.*

Sec., No. 21 2:13-CV-0899-KJN, 2014 WL 4195012, at *4 n.8 (E.D. Cal. Aug. 22, 2014)
 (“[B]ecause it is the 22 ALJ’s responsibility to formulate an RFC that is based on the record as a
whole,... the RFC need 23 not exactly match the opinion or findings of any particular medical
source.”); accord *Macias v. 24 O’Malley*, No. 1:22-cv-01283-JLT-SKO, 2024 WL 51352, at *7
(E.D.

Cal. Jan. 4, 2024) 25 (rejecting argument that ALJ’s conclusion “must mirror one specific medical opinion”), report 26 2 The parties are advised that this Court has carefully reviewed and considered all of the briefs, 27 including 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 28 the argument or brief.

1 and recommendation adopted, No. 1:22-CV-1283 JLT SKO, 2024 WL 246173 (E.D. Cal. Jan. 23, 2 2024). 3 Plaintiff also suggests that in developing the RFC the ALJ interpreted raw medical data 4 and made medical judgments. (Doc. 12 at 5.)

However, Plaintiff does not cite any “raw medical 5 data” that the ALJ interpreted in developing the RFC. Further, the ALJ did not make medical 6 judgments by improperly substituting his own opinion for a medical opinion. Rather, the ALJ 7 expressly considered the consultative orthopedic evaluation completed by Dr. Dale H. Van Kirk 8 and the prior administrative medical findings of the state agency physicians, Dr. A. Khong and 9 Dr. L. DeSouza.

AR 18-21. Upon evaluation, the ALJ found that these opinions were of “very 10 limited persuasion.” AR 18, 20. Plaintiff contends that the ALJ’s evaluation of the consultative 11 examiner’s opinion and the prior administrative findings of the state agency physicians is 12 unsupported by the record. (Doc.12 at 6.) 13 Because Plaintiff applied for benefits after March 27, 2017, her claim is governed by the 14 agency’s newer regulations concerning how an ALJ must evaluate medical opinions.

20 C.F.R. § 15 416.920c. Under these regulations, the Commissioner does “not defer or give any specific 16 evidentiary weight, including controlling weight, to any medical opinion(s) or prior 17 administrative medical finding(s), including those from [a claimant’s] medical sources.” 20 18 C.F.R. § 416.920c(a).

The Commissioner evaluates the persuasiveness of the medical opinions 19 based on the following factors: (1) supportability; (2) consistency; (3) relationship with the 20 claimant; (4) specialization; and (5) other factors, such as “evidence showing a medical source 21 has familiarity with the other evidence in the claim or an understanding of our disability 22 program’s policies and evidentiary requirements.” 20 C.F.R. § 416.920c(c)(3)(1)-(5).

23 Supportability and consistency are the most important factors. 20 C.F.R. § 416.920c(b)(2). 24 Supportability means the extent to which a medical source supports the medical opinion by 25 explaining the “relevant... objective medical evidence.” 20 C.F.R. § 416.920c(c)(1); see also 26 Woods v. Kijakazi, 32 F.4th 785, 792 (9th Cir. 2022). Consistency means the extent to which a 27 medical opinion is “consistent... with the evidence from other medical sources and nonmedical 28 sources in the claim.” 20 C.F.R. § 416.920c(c)(2); Woods, 32 F.4th at 792.

1 Ninth Circuit case law preceding the new regulations afforded deference to the medical 2
opinions of treating and examining physicians. Indeed, prior to the current regulations, the Ninth 3
Circuit required ALJs to provide clear and convincing or specific and legitimate reasons for 4
rejecting the medical opinions of treating or examining physicians. These standards of 5
articulation no longer apply in light of the new regulations.

As explained by the Ninth Circuit in 6 *Woods*: 7 The revised social security regulations are clearly
irreconcilable with our caselaw according special deference to the opinions of treating and
examining physicians 8 on account of their relationship with the claimant. See 20 C.F.R. §
404.1520c(a) (“We will not defer or give any specific evidentiary weight, including controlling 9
weight, to any medical opinion(s)…, including those from your medical sources.”).

Our requirement that ALJs provide “specific and legitimate reasons” 10 for rejecting a treating or
examining doctor’s opinion, which stems from the special weight given to such opinions, see
Murray, 722 F.2d at 501–02, is 11 likewise incompatible with the revised regulations. Insisting
that ALJs provide a more robust explanation when discrediting evidence from certain sources 12
necessarily favors the evidence from those sources—contrary to the revised regulations.

13 14 *Id.* at 792. The Ninth Circuit has clarified that “under the new regulations, an ALJ cannot
reject 15 an examining or treating doctor’s opinion as unsupported or inconsistent without
providing an 16 explanation supported by substantial evidence.” *Id.* at 792. “The agency must
‘articulate... how 17 persuasive’ it finds ‘all of the medical opinions’ from each doctor or other
source, 20 C.F.R. § 18 404.1520c(b), and ‘explain how [it] considered the supportability and
consistency factors’ in 19 reaching these findings, *id.* § 404.1520c(b)(2).” *Id.*; see also 20 C.F.R. §
416.920c(b).

For the 20 reasons that follow, the Court finds that the ALJ appropriately evaluated the
persuasiveness of the 21 consultative examiner’s opinion and the prior administrative medical
findings of the state agency 22 physicians. 23 On September 11, 2021, the consultative examiner,
Dr. Van Kirk, completed a 24 consultative orthopedic evaluation. AR 448-52.

On examination, Plaintiff’s tandem walking 25 with one foot in front of the other was satisfactory.
She was able to get up on her toes and her 26 heels, and was able to squat about halfway down but
could go no further because of low back 27 pain. AR 450. She had full range of motion of her
cervical spine, hips, knees, ankles, shoulders, 28 elbows, wrists, and fingers/thumbs.

AR 450-51. Her main pain was in the mid-lumbar spine area 1 radiating into the buttocks
bilaterally. She was able to bend over to within 8 inches of touching 2 the floor with her long
fingers. AR 450. Her motor strength and sensation were normal in the 3 upper and lower
extremities. AR 451. Dr. Van Kirk diagnosed “[c]hronic lumbosacral 4 musculoligamentous
strain/sprain associated with x-ray changes of the lumbar spine dated May 5 21, 2014.” AR 451.

The x-ray showed “mild spondylosis L4-L5 level; mild disk height loss at 6 L5-S1.” AR 448. Dr. Van Kirk opined that Plaintiff should be able to stand and/or walk for six 7 hours out of an eight-hour day and had no sitting limitations. AR 451. She should be able to lift 8 and carry 10 pounds frequently, 20 pounds occasionally, “because of chronic low back pain with 9 restricted range of motion of the lumbar spine.” AR 452.

She was limited to only occasional 10 postural activities and should not be required to work in an extremely cold and/or damp 11 environment because her symptoms are enhanced with cold weather. Id. 12 In evaluating the persuasiveness of Dr. Van Kirk’s opinion, the ALJ explained as follows: 13 Dr. Van Kirk’s opinion is of very limited persuasion as the assessed limitations were not adequately supported by the minimal objective examination findings or 14 the outdated x-ray report he reviewed which documented only mild abnormalities in 2014 (see, Exhibit 1F, p. 19.)

Furthermore, Dr. Van Kirk correlated the 2014 15 imaging with the current diagnosis of musculoligamentous strain/sprain, which presents an unconvincing association between evidence and effect. The current 16 evidence documents her symptoms responsive to medications and physical therapy (see, Exhibit 8F, pp. 18, 45), despite her report to the examiner omitting 17 pain medications she is taking and stating physical therapy was not beneficial.

Specifically, the claimant stated that medications have been working well for her 18 (Exhibit 8F, p. 18) and she noted improvement with physical therapy and Tramadol (Exhibit 8F, p. 45). The claimant has also reported improvement in 19 daily physical activities (Exhibit 7F, p. 18)[.] 20 AR 20-21. 21 On October 29, 2021, Dr. A. Khong, a state agency consultant, opined at the initial 22 determination level that Plaintiff could lift and/or carry 20 pounds occasionally, 10 pounds 23 frequently, could stand and/or walk about 6 hours in an 8-hour workday, and could sit about 6 24 hours in an 8-hour workday.

AR 67. Dr. Khong further opined that Plaintiff could occasionally 25 climb ramps/stairs, but never climb ladders/ropes/scaffolds, and could occasionally stoop, kneel, 26 crouch, and crawl. AR 68. On April 21, 2022, Dr. L. DeSouza, a state agency consultant, opined 27 on reconsideration that Plaintiff could lift and/or carry 20 pounds occasionally, 10 pounds 28 frequently, could stand and/or walk about 6 hours in an 8-hour workday, and could sit about 6 1 hours in an 8-hour workday.

AR 85. Dr. DeSouza further opined that Plaintiff could 2 occasionally climb ramps/stairs, but never climb ladders/ropes/scaffolds, and could occasionally 3 stoop, kneel, crouch, and crawl. AR 85-86. 4 The ALJ considered the persuasiveness of these prior administrative findings and 5 reasoned as follows: 6 The Disability Determination Service medical opinions are of very limited persuasion as these consultants did not review relevant evidence showing the 7 claimant’s symptoms are generally well controlled with conservative modalities including physical therapy and medications.

Although the consultants addressed 8 hypertension, obesity, and low back pain, the exertional limitations overstate exertional restrictions as the strength findings, joint range of motion, and 9 sensation findings are not as limiting as these consultants assessed. With the claimant's symptoms under good control, the evidence supports no less than 10 medium exertional functioning.

11 AR 19. 12 In challenging the ALJ's evaluation of the medical opinion evidence, Plaintiff argues that 13 the ALJ's statement that the opinions of the consultative examiner and state agency medical 14 consultants were inconsistent with the recent evidence showing that Plaintiff's condition 15 improved with treatment is "wholly unsupported by the record." (Doc.

12 at 6.) To illustrate, 16 Plaintiff points out that while the ALJ stated the evidence showed Plaintiff's condition improved 17 with physical therapy, the only physical therapy treatment in the record occurred in 2021 before 18 the consultative examination and the state agency consultants' review. (Id., citing AR 457-99 19 [physical therapy records from September 2020 through October 2021]).

Plaintiff thus contends 20 that the ALJ is "unable to point to any evidence that supports his conclusion that her conditions 21 improved after the medical opinions were issued." (Id.) 22 Even accepting Plaintiff's argument regarding the dates of her physical therapy treatment, 23 the record includes Plaintiff's report in October 2022 that she "[h]as noted some improvement 24 with physical therapy and Tramadol," which was after the consultative examination and the state 25 agency consultants' review.

AR 641. Plaintiff's argument therefore fails. Further, with respect 26 to the consultative examination, Plaintiff fails to address the ALJ's determination that the 27 consultative examiner's opinion was not adequately supported given the examiner's minimal 28 objective examination findings and review of an outdated x-ray report that documented only mild 1 abnormalities in 2014.

AR 20 (citing AR 404). Plaintiff also fails to address the ALJ's 2 contrasting of the examiner's opinion with Plaintiff's statements that medications had been 3 working well for her (AR 614), she noted improvement with physical therapy and Tramadol (AR 4 641), and she reported improvement in daily physical activities (AR 577), all of which speak to 5 the consistency of the opinion with other sources in the record.

AR 21. 6 With respect to the state agency consultants, Plaintiff fails to address the ALJ's 7 determination that recent evidence showed Plaintiff's condition was generally well controlled 8 with medications, which also speaks to the consistency of their opinions with other evidence in 9 the record. AR 19. According to the record, in July 2022, Plaintiff had improved control of her 10 blood pressure with medication compliance.³ AR 18, 667-69.

Similarly, in August 2022, 11 Plaintiff reported compliance with her medications and feeling that her blood pressure was better 12 controlled. Her physician noted that her blood pressure was “much better controlled.” AR 15, 13 662-65.

In October 2022, Plaintiff noted “some improvement with physical therapy and 14 tramadol.” AR 17, 641. In February 2023, Plaintiff reported that “medications have been 15 working well for her.” AR 17, 614. 16 Plaintiff also fails to address the ALJ’s finding that the state agency consultants overstated 17 the exertional limitations because the strength findings, joint range of motion, and sensation 18 findings were not as limiting as assessed, which speaks to the supportability of the findings.

AR 19 19. As to this latter determination, the ALJ indicated that on reconsideration Dr. DeSouza “noted 20 that the updated evidence showed ongoing complaints of back pain, but the examination findings 21 do not support greater limitations.

For example, the claimant demonstrated normal unassisted 22 ambulation, decreased range of motion of the lumbar spine, but full range of motion in all other 23 joints, as well as full motor strength and intact sensation.” AR 19, 83. 24 For the reasons stated, the Court finds that the ALJ did not err in his evaluation of the 25 3 In challenging the ALJ’s assessment of the opinions of the consultative examiner and state agency 26 medical consultants, Plaintiff contends that “the ALJ spent the majority of the decision focusing on Plaintiff’s lack of adherence to prescribed treatment without ever accounting for the reasons why Plaintiff 27 elected not to.” (Doc.

12 at 6.) However, the ALJ did not cite lack of adherence to prescribed treatment in evaluating the persuasiveness of the medical opinions or prior administrative medical findings. See AR 28 19, 20-21. 1 consultative examiner’s opinion and the prior administrative medical findings. 2 B. Duty to Develop the Record 3 Plaintiff next argues that the ALJ’s rationale for finding the opinions of the consultative 4 examiner and state agency consultants not persuasive “should have triggered the ALJ’s duty to 5 develop the record and obtain an updated opinion of Plaintiff’s conditions, given he stated there 6 was a change in the severity of her condition.” (Doc.

12 at 7.) The Court disagrees. 7 It is Plaintiff’s burden to establish disability. Terry, 903 F.2d at 1275; 42 U.S.C. § 8 423(d)(5)(A). (“An individual shall not be considered to be under a disability unless he furnishes 9 such medical and other evidence of the existence thereof as the Commissioner of Social Security 10 may require.”); 20 C.F.R. §§ 404.1512(a), 416.912(a) (“[Y]ou have to prove to us that you are...

11 disabled....”); Wagner v. Comm’r of Soc. Sec., No. 1:22-cv-01566-CDB, 2024 WL 1312214, at 12 *9 (E.D. Cal. Mar. 27, 2024) (acknowledging plaintiff’s burden to establish disability). An ALJ’s 13 duty to develop the record is triggered only where there is an inadequacy or ambiguity.

Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005); Mayes v. Massanari, 276 F.3d 453, 459-60 (9th Cir. 2001).

2001) (“[a]n ALJ’s duty to develop the record further is triggered only when there is 16 ambiguous evidence or when the record is inadequate to allow for proper evaluation of the 17 evidence.”). 18 Here, there is no indication that the record was inadequate or ambiguous, such that it 19 triggered the ALJ’s duty to further develop the record.

The record in this case included Plaintiff’s 20 testimony, her treatment records, the consultative examiner’s opinion, and the prior 21 administrative medical findings, all of which were summarized by the ALJ. AR 14-21, 42-48, 22 50-51, 55-72, 74-91, 448-52. Absent any inadequacy or ambiguity, the ALJ was not required to 23 request an updated consultative examination.

See, e.g., LeBeouf v. Saul, No. 1:19-cv-00201- 24 BAM, 2020 WL 5702240, at *10-11 (E.D. Cal. Sept. 24, 2020) (concluding ALJ was not required 25 to request a consultative examination in part because the “record contained what appears to be 26 Plaintiff’s complete treatment records, which supported the ALJ’s finding and did not present an 27 ambiguity or inadequacy.”); see also Wagner, 2024 WL 1312214, at *9-10 (determining absence 28 of opinion from treating or examining physician did not give rise to duty to develop record where 1 record contained opinions of state agency medical consultants, plaintiff’s testimony, and 2 plaintiff’s complete medical records).

Moreover, the ALJ held the record open after the hearing 3 for Plaintiff to supplement with additional records. AR 40. An ALJ can discharge the duty to 4 develop the record further by “keeping the record open after the hearing to allow supplementation 5 of the record.” Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001); Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir.

1989) (ALJ satisfied duty to develop the record by keeping record open 7 for supplementation). 8 C. Subjective Testimony 9 Plaintiff next argues that the ALJ failed to offer sufficient reasons for rejecting Plaintiff’s 10 subjective complaints. (Doc. 12 at 7-8.) 11 In deciding whether to admit a claimant’s subjective complaints, the ALJ must engage in a 12 two-step analysis.

Garrison v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014); Batson v. Comm’r of 13 Soc. Sec. Admin., 359 F.3d 1190, 1196 (9th Cir. 2004). First, the claimant must produce objective 14 medical evidence of his impairment that could reasonably be expected to produce some degree of 15 the symptom or pain alleged. Garrison, 759 F.3d at 1014. If the claimant satisfies the first step 16 and there is no evidence of malingering, the ALJ may reject the claimant’s testimony regarding 17 the severity of his symptoms only by offering specific, clear and convincing reasons for doing so.

18 Id. at 1015. 19 Here, the ALJ found that Plaintiff’s medically determinable impairments could reasonably 20 be expected to cause the alleged symptoms, but discounted her statements

concerning the 21 intensity, persistence and limiting effects of those symptoms. AR 18.

The ALJ was therefore 22 required to provide specific, clear and convincing reasons for discounting Plaintiff's subjective 23 complaints. 24 The Court finds that the ALJ provided specific, clear, and convincing reasons for 25 discounting Plaintiff's subjective complaints.

First, the ALJ concluded that Plaintiff's subjective 26 allegations were not supported by the objective evidence. AR 21. Although lack of supporting 27 medical evidence cannot form the sole basis for discounting testimony, it is a factor that the ALJ 28 can consider. See *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005).

Here, the ALJ explained 1 that Plaintiff's testimony at the hearing was not persuasive or consistent with the objective 2 evidence, such as the benign physical examination findings throughout the record. AR 21. 3 Second, the ALJ discounted Plaintiff's subjective complaints based on her activities of 4 daily living. AR 21. An ALJ may properly discount a claimant's subjective complaints when the 5 daily activities demonstrate an inconsistency between what the claimant can do and the degree 6 that disability is alleged.

Molina v. Astrue, 674 F.3d 1104, 1112–13 (9th Cir. 2012) (an ALJ may 7 consider “whether the claimant engages in daily activities inconsistent with the alleged 8 symptoms”), superseded by regulation on other grounds.

Here, the ALJ determined that Plaintiff's 9 activities of daily living were “not consistent with one who suffers such severe limitations as to 10 preclude all work activity as she lives alone and tends to all of her needs without assistance.” AR 11 21, 42. Plaintiff does not challenge this reason for discounting her subjective complaints. (See 12 Doc. 12 at 7-8.)

Further, even where a plaintiff's activities suggest some difficulty functioning, 13 the activities may be grounds for discrediting the claimant's testimony to the extent that they 14 contradict claims of a totally debilitating impairment. *Molina*, 674 F.3d at 1113.

The ALJ also 15 noted that Plaintiff had been looking for work and intended to return to past employment but for 16 the building catching fire. AR 21, 43-44. 17 Third, the ALJ discounted Plaintiff's allegations based on the effectiveness of treatment. 18 AR 21.

The effectiveness of medication or treatment is a relevant factor in determining the 19 severity of a claimant's symptoms. 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3); *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017) (“[E]vidence of medical treatment successfully 21 relieving symptoms can undermine a claim of disability.”).

Here, the ALJ found that Plaintiff's 22 impairments had been “responsive to treatment when she is compliant and do not impose a 23 disabling degree of limitation.” AR 21. As an example, the ALJ indicated that when Plaintiff 24 attended physical therapy, she demonstrated good exercise

tolerance. AR 21; see also AR 16, 25 478 (“Pt. demonstrates good tolerance to her ex without adverse effects or symptom 26 provocation.”).

As another example, the ALJ noted that when Plaintiff started taking her blood 27 pressure medications consistently, her blood pressure improved drastically. AR 21; see also AR 28 18, 662-65, 667-69. 1 Fourth, the ALJ discounted Plaintiff’s allegations based on her failure to follow prescribed 2 treatment. AR 21. An unexplained or inadequately explained failure to follow a prescribed 3 course of treatment may support the discounting of pain allegations.

See *Bunnell v. Sullivan*, 947 4 F.2d 341, 346 (9th Cir. 1991); see also *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). 5 Relevant here, the ALJ noted that at times, Plaintiff “has refused recommended treatment even 6 though she has been advised such treatment could relieve her symptoms and allow her to return to 7 work.” AR 21; see also AR 15, 598 (12/7/21; “Chronic Back pain:...

Does not [want] to see 8 neuroSx. Want to see PT”); 681 (4/5/2022; “Again rec her to see neuroSx as she can not continue 9 on disability long time. If Sx can help her then after Sx she will be able to work.”). The ALJ 10 further explained: 11 The evidence shows that the claimant was aware of the treatment plan her physician determined she must follow. This treatment plan, as set for by her 12 treating physicians, was clearly expected to relieve her subjective symptoms to allow her to work.

The evidence of record also indicates the claimant has refused 13 to follow prescribed treatment for some time and was counseled regarding her noncompliance. The claimant did not have an acceptable reason for failure to 14 follow prescribed treatment pursuant to 20 CFR 416.930. Evidence that the claimant has not been entirely compliant in taking prescribed medications[] also 15 suggests that the symptoms may not have been as limiting as she alleged.

16 AR 21. 17 The ALJ additionally noted that Plaintiff’s statements about the intensity, persistence, and 18 limiting effects of her symptoms were inconsistent with the medical record showing “poor 19 compliance with hypertension treatment, but when she is complaint, she experiences 20 improvement to her blood pressure and reportedly feels better.” AR 18; see also AR 18, 662-65, 21 667-69.

The ALJ also noted that with regard to her back complaints, the evidence “shows she 22 preferred physical therapy and medications to treat her symptoms, but did not attend physical 23 therapy as scheduled. She continued to request referrals to physical therapy, but failed to follow 24 through with initiating treatment.” AR 18 see also AR 16, 682 (4/25/2022; “Does not want to see 25 neuroSx.

Want to see PT, referral sent.”); AR 17, 709 (9/12/2022; “Of note, this is pt’s third 26 [physical therapy] case with our company, out of 13 visits, she only came to 3, 2 of which were 27

evaluations. She was told there would likely not be a change with only one treatment visit.”); 619 28 (1/11/2023 request for physical therapy referral; “Stated she was previously following them, 1 however did not have issues with transportation, so was unable to keep up with appointments.’) 2 108, 602 (5/19/2023; request for physical therapy), 605 (5/19/2023; “rec to start PT soon and will 3 do MRI after that and neuroSx as she need to take care of her s/s and start working again.”) 4 Plaintiff argues that the record contains notations of the reasons why she failed to follow 5 the prescribed treatment that were not considered by the ALJ, including an inability to afford or 6 keep medications due to homelessness, feeling better without the medications due to side effects, 7 and that she was “not convinced” of the side effects of her condition.

(Doc. 12 at 6-7, 8.) To 8 support this argument, Plaintiff cites a May 2023 treatment note that contains information from a 9 treatment encounter on December 7, 2021, indicating that she had “so many reasons as why she 10 does not take rx.” (Id. at 6-7, citing AR 602).

Although Plaintiff may have had “many reasons” 11 for not taking her blood pressure medication in December 2021, the record reflects that she was 12 later compliant with her hypertension medications and her blood pressure improved in 2022. AR 13 18, 662-65 (August 2022), 667-69 (July 2022). Further, any reason for not taking blood pressure 14 medications in December 2021 does not explain why Plaintiff failed to attend physical therapy or 15 follow through with the neurology consultation.

16 Moreover, the ALJ expressly found that Plaintiff did not have an acceptable reason for 17 failure to follow prescribed treatment pursuant to 20 C.F.R. § 416.930. Examples of good 18 reasons for not following treatment under the regulations include: (1) the specific medical 19 treatment is contrary to the established teaching and tenets of the claimant’s religion; (2) the 20 prescribed treatment would be cataract surgery for one eye when there is an impairment of the 21 other eye resulting in a severe loss of vision and is not subject to improvement through treatment; 22 (3) surgery was previously performed with unsuccessful results and the same surgery is being 23 recommended for the same impairment; (4) the treatment because of its enormity, unusual nature, 24 or other reason is very risky; or (5) the treatment involves amputation of an extremity, or a major 25 part of an extremity.

20 C.F.R. § 416.930(c). None of these reasons applies to Plaintiff’s failure 26 to comply with recommended treatment. 27 The Court concludes that the ALJ provided specific, clear, and convincing reasons for 28 discounting Plaintiff’s subjective complaints. Even if one of the reasons for discounting those 1 complaints was invalid, any such error is harmless because the ALJ provided other valid reasons 2 for discounting Plaintiff’s subjective testimony.

See *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 3 F.3d 1155, 1161-63 (9th Cir. 2008) (finding that two invalid reasons to reject a claimant’s 4 testimony were harmless error where the ALJ articulated two other reasons supported by 5 substantial evidence in the record); *Molina*, 674 F.3d

at 1115 (“several of our cases have held that 6 an ALJ’s error was harmless where the ALJ provided one or more invalid reasons for disbelieving 7 a claimant’s testimony, but also provided valid reasons that were supported by the record”).

8 CONCLUSION AND RECOMMENDATION 9 Based on the foregoing, the Court finds that the ALJ’s decision is supported by substantial 10 evidence in the record as a whole and is based on proper legal standards. Accordingly, IT IS 11 HEREBY RECOMMENDED as follows: 12 1. Plaintiff’s motion for summary judgment or remand (Doc. 12) and appeal from the 13 agency’s decision be denied.

14 2. The Commissioner’s request to affirm the agency decision (Doc. 14) be granted. 15 3. The Clerk of the Court be directed to enter judgment in favor of Defendant 16 Commissioner of Social Security, and against Plaintiff Monica Gutierrez Pedroza. 17 18 *** 19 These Findings and Recommendations will be submitted to the United States District 20 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).

Within 21 fourteen (14) days after being served with these Findings and Recommendations, the parties may 22 file written objections with the court. The document should be captioned “Objections to 23 Magistrate Judge’s Findings and Recommendations.” Objections, if any, shall not exceed 24 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 25 number if already in the record before the Court.

Any pages filed in excess of the 15-page 26 limit may not be considered. The parties are advised that failure to file objections within the 27 specified time may result in the waiver of the “right to challenge the magistrate’s factual 28 /// 1 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter 2 v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir.

1991)). 3 IT IS SO ORDERED. 4 5 Dated: July 25, 2025 /s/ Barbara A. McAuliffe _ UNITED STATES MAGISTRATE JUDGE 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28