

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

**Stephanie Aleman M. v. Leland Dudek, Acting Commissioner of
Social Security**

Aleman M. · No. 2:24-cv-01391-PD · Decided March 20, 2025

OPINION

Stephanie Aleman Medina v. Martin O'Malley

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 STEPHANIE ALEMAN M.,¹ Case No. 2:24-cv-01391-PD 12 Plaintiff, MEMORANDUM
OPINION

13 v. AND ORDER AFFIRMING

COMMISSIONER

14 LELAND DUDEK, Acting

15 COMMISSIONER OF SOCIAL SECURITY,²

16 Defendant. 17

Plaintiff challenges the denial of her application for Social Security 18 disability insurance
benefits (“DIB”) and supplemental security income 19 benefits (“SSI”). For the reasons discussed
below, the decision of the 20 Administrative Law Judge is affirmed. 21 22 23 24 25 1 Plaintiff’s
name is partially redacted in line with Federal Rule of Civil

26 Procedure 5.2(c)(2)(B) and the recommendation of the United States Judicial

Conference Committee on Court Administration and Case Management. 27 2 Leland Dudek, who
was appointed Acting Commissioner on February 17, 28 2025, is substituted in as the correct
Defendant. See Fed. R. Civ. P. 25(d).

1 I. PERTINENT PROCEDURAL HISTORY AND DISPUTED ISSUES

2 On January 24, 2020, Plaintiff protectively filed applications for DIB 3 and SSI, alleging
disability beginning February 9, 2018, from diabetes, 4 neuropathy, “[d]iabetic retinopathy,”
“bulging discs,” and sciatica. 5 [Administrative Record (“AR”) 15, 318-19, 326, 350.] Plaintiff’s
applications 6 were denied initially and on reconsideration. [AR 117-18, 159-60.] She 7 requested
a hearing, which was held before an ALJ on May 4, 2022. [AR 32- 8 53.] Plaintiff appeared with
counsel, and the ALJ heard testimony from her 9 and a vocational expert (“VE”). [AR 32, 36-52.]
On February 15, 2023, the 10 ALJ found Plaintiff not disabled under the Social Security Act
(“SSA”). [AR 11 15-25.] Specifically, the ALJ determined that Plaintiff met the special 12

earnings requirements through March 31, 2019, the date last insured (“DLI”). 13 [AR 18.] The ALJ then followed the requisite five-step sequential evaluation 14 process to assess whether she was disabled under the SSA. See *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as amended Apr. 9, 1996), 16 superseded on other grounds by regulation as stated in *Farlow v. Kijakazi*, 53 F.4th 485 (9th Cir. 2022); 20 C.F.R. §§ 404.1520(a), 416.920(a). 18 At step one, the ALJ found that Plaintiff had not engaged in substantial 19 gainful activity since February 9, 2018, the alleged onset date. [AR 18.] 20 At step two, Plaintiff had severe impairments of “degenerative disc 21 disease of the lumbar and cervical spine,” neuropathy, diabetes, fibromyalgia, 22 “adhesive capsulitis of the left shoulder,” “rotator cuff syndrome,” and “obesity status/post gastric surgery.” [Id.] She concluded that several of Plaintiff’s 23 impairments, including her “cataract and diabetic retinopathy with macular 24 edema,” were not severe. [AR 18-19.] 25 At step three, she found that Plaintiff’s impairments did not meet or 26 equal any of the impairments in the Listing. [AR 19-20.] 27 28 1 At step four, Plaintiff had the RFC to perform light work except that 2 she could 3 lift and/or carry 20 pounds occasionally and 10 pounds frequently; she c[ould] stand, walk, and sit each for six hours in an eight-hour 4 workday; she c[ould] frequently reach, handle, finger, feel, push, 5 and pull with the right, dominant upper extremity; she c[ould] occasionally reach, push, and pull with the left upper extremity 6 and . . . frequently use her left hand for handling, fingering, and 7 feeling; she c[ould] occasionally operate foot controls bilaterally; she c[ould] occasionally crouch and climb ladders, ropes, scaffolds, 8 stairs, and ramps; she c[ould] frequently stoop, kneel, and crawl. 9 [AR 20.] 10 The ALJ concluded that Plaintiff was able to perform her past relevant 11 work as a photographer. [AR 24.] Accordingly, she concluded that Plaintiff 12 did not meet the SSA’s definition of disability from the alleged onset date 13 through the date of the decision. [AR 24-25.] 14 Plaintiff raises four issues: 15

- (1) Whether the ALJ erred in finding that Plaintiff’s visual 16 impairments were nonsevere and warranted no work restrictions. 17
- (2) Whether the ALJ properly evaluated the consultative internal- 18 medicine examining doctor’s statements. 19
- (3) Whether the ALJ properly evaluated Plaintiff’s subjective 20 symptom statements and testimony concerning her diabetic polyneuropathy. 21
- (4) Whether the ALJ properly resolved an apparent conflict between 22 the VE’s testimony and the Dictionary of Occupational Titles. 23 [See Dkt. No. 12 at 6-20.] 24 16-22.]

25 II. STANDARD OF REVIEW

26 Under 42 U.S.C. § 405(g), a district court may review the agency’s 27 decision to deny benefits. A court will vacate the agency’s decision “only if the 28 ALJ’s decision was not supported by substantial evidence in the record as a 1 whole or if the ALJ applied the wrong legal standard.” *Coleman v. Saul*, 979 F.3d 751, 755 (9th Cir. 2020) (citations omitted). “Substantial evidence means 3 more than a mere scintilla but less than a preponderance; it is such relevant 4 evidence as a reasonable person might accept as adequate to support a 5

conclusion.” *Id.*; *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (same). 6 It is the ALJ’s responsibility to resolve conflicts in the medical evidence 7 and ambiguities in the record. *Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir. 8 2020). When this evidence is “susceptible to more than one rational 9 interpretation,” the ALJ’s reasonable evaluation of the proof should be upheld. 10 *Ryan v. Comm’r Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008); *Tran v. Saul*, 11 804 F. App’x 676, 678 (9th Cir. 2020). 12 Error in Social Security determinations is subject to harmless-error 13 analysis. *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). Error is 14 harmless if “it is inconsequential to the ultimate nondisability determination” or, despite the legal error, “the agency’s path is reasonably discerned.” 15 *Treichler v. Comm’r Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014) 16 (citation omitted). 17

III. DISCUSSION

18 A. The ALJ Did Not Err in Finding Plaintiff’s Visual 19 Impairments Nonsevere and Warranting No Work 20 Restrictions 21 Plaintiff argues that the ALJ erred in finding her visual impairments 22 nonsevere and in finding that they warranted no work restrictions. [Dkt. No. 23 12 at 6-10.] She contends that she “consistently exhibited poor visual acuity 24 in her left eye” despite receiving “regular intraocular injections in her eyes” to 25 treat “blurred vision and floaters resulting from her cataracts and diabetic 26 retinopathy with macular edema.” [*Id.* at 6.] 27 1. Applicable law 28 At step two of the sequential evaluation process, a plaintiff has the 1 burden to present evidence of medical signs, symptoms, and laboratory 2 findings that establish a medically determinable physical or mental 3 impairment that is severe, and that can be expected to result in death or 4 which has lasted or can be expected to last for a continuous period of at least 5 twelve months. See *Ukolov v. Barnhart*, 420 F.3d 1002, 1004–05 (9th Cir. 6 2005) (citing 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(A)); §§ 404.1520, 416.920. 7 Step two is “a de minimis screening device [used] to dispose of groundless 8 claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). An 9 impairment or combination of impairments can be found “not severe” only if 10 the evidence establishes a slight abnormality that has “no more than a 11 minimal effect on an individual’s ability to work.” *Webb v. Barnhart*, 433 F.3d 12 683, 686 (9th Cir. 2005) (citation omitted). The “severity requirement cannot 13 be satisfied when medical evidence shows that the person has the ability to 14 perform basic work activities, as required in most jobs.” SSR 85-28, 1985 WL 56856, at *3 (Jan. 1, 1985). Basic work activities include “walking, standing, 15 sitting, lifting, pushing, pulling, reaching, carrying, or handling; seeing, 16 hearing, speaking; understanding, carrying out, and remembering simple 17 instructions; use of judgment, responding appropriately to supervision, 18 coworkers, and usual work situations.” *Id.* 19

2. The ALJ’s Decision

20 21 The ALJ noted that Plaintiff testified that she received injections in her eyes every six weeks, 22 to manage swelling, and while the medical record generally 23 supports this testimony, in February 2022, she reported that she had not followed up “in a while.” She reported having blurred 24 vision, floaters, and various associated functional limitations.

25 In 2020, an internal medicine consultative examiner characterized [Plaintiff's] visual acuity as "severely decreased" on 26 the left, at 20/200, and "moderately decreased" on the right, at 27 20/40. However, approximately one month later, a progress note from Win Retina indicated 20/30+1 acuity on the right and 20/70- 28 1 visual acuity varied, particularly on the left. An optometrist who examined [Plaintiff] in 2022 remarked that she had good central 2 vision in her right eye, was not legally blind, and had good 3 peripheral vision. There is no indication that her visual impairments have more 4 than a minimal effect on [Plaintiff's] ability to do basic work 5 activities. For example, she testified that she was alone most of the time during the day and the internal medicine consultative 6 examiner noted that she was able to "visually move around the 7 office." Further, there is no indication that she used prescribed eyeglasses and she denied having any vision-related difficulty 8 with driving. Occupational therapy records document improved 9 visual function with various workarounds. 10 [AR 19 (citations omitted).] 11 3. Analysis 12 The ALJ properly found Plaintiff's visual impairments nonsevere [see 13 AR 18-19] and not warranting work limitations [see AR 20-21]. The record 14 documented that Plaintiff had a history of vision complaints [see AR 463-83] 15 and was diagnosed with cataract and diabetic retinopathy with macular 16 edema [see AR 483, 1044]. But her visual acuity varied, as the ALJ noted. 17 [AR 19 (citing AR 577, 1045).] She was assessed "severely decreased" visual 18 acuity in the left eye in September 2020, but her left-eye vision had improved 19 significantly just a month later. [Id. (citing AR 577, 579, 1045).] In February 20 2022 she was noted to have "good central vision in her right eye, was not 21 legally blind, and had good peripheral vision." [Id. (citing AR 1259).] The 22 same examiner found her vision "adequate for working." [AR 1259.] 23 Plaintiff's doctor certified to the DMV in a 2018 "Driver Medical 24 Evaluation" that neither her vision nor the medications prescribed for it 25 "affect[ed] safe driving." [AR 548.] In fact, Plaintiff herself testified that she 26 didn't "have problems driving" [AR 40], as the ALJ noted [AR 19], and that it 27 was "mainly" her back and foot pain that prevented her from working [AR 38]. 28 Indeed, the only visual functional limitations to which she points are her own 1 complaints of "trouble reading and watching TV." [Dkt. No. 12 at 8.] But she 2 does not show how those issues, even if fully credited, had "more than a 3 minimal effect on [her] ability to work" as a photographer. Webb, 433 F.3d at 4 686. 5 Plaintiff argues that even if her vision impairments were nonsevere, the 6 ALJ erred in not considering their functional impact when formulating her 7 RFC. [Dkt. No. 12 at 9.] But Plaintiff is incorrect that the ALJ did not do so. 8 She discussed Plaintiff's vision issues in her analysis of the RFC, including 9 the findings of the internal-medicine consultative examiner [see AR 21], and 10 found that they did not warrant any work limitations [AR 20]. 11 Further, even if the ALJ erred in finding Plaintiff's vision impairments 12 nonsevere, any error was harmless. In light of Plaintiff's concession that she 13 had no "problems driving," it appears that she "had at least the visual acuity 14 necessary to take photographs," as Defendant argues. [Dkt. No. 19 at 5.] Plaintiff does not identify what additional visual limitations the ALJ should 15 have included, what

evidence supports such limitations, or how those 16 limitations would have prevented her from performing the photographer job. 17 See *Burch v. Barnhart*, 400 F.3d 676, 683-84 (9th Cir. 2005) (finding that ALJ 18 adequately considered impairment in RFC determination because plaintiff did 19 not “point[] to any evidence of functional limitations due to [impairment] 20 which would have impacted the ALJ’s analysis”). Plaintiff argues that the 21 DOT “describes the duties of photographer as including the determination of 22 subject-to-lens distance and adjusting focus, activities that would be disrupted 23 by her left eye visual dysfunction.” [Dkt. No. 20 at 5.] She offers no support 24 for this argument, but simply asserts that “one does not need to be a 25 vocational expert to know that a professional photographer must be able to 26 see well to ensure proper focus, lighting, and environmental contrast, which 27 all affect the quality of the photographs.” [Id.] Plaintiff has identified no 28 1 medical opinion or other evidence suggesting that the level of visual 2 dysfunction she suffered prevented her from performing these tasks. 3 Therefore, any error was harmless. See *Molina v. Astrue*, 674 F.3d 1104, 1115 4 (9th Cir. 2012) (error is harmless when it is “inconsequential to the ultimate 5 nondisability determination” (citation omitted)), superseded on other grounds 6 by §§ 404.1502(a), 416.902(a).. 7 B. The ALJ Properly Evaluated the Opinion of Consultative 8 Internist Seung Ha Lim in Fashioning the RFC 9 1. Applicable law 10 An RFC is “an assessment of an individual’s ability to do sustained 11 work-related physical and mental activities in a work setting on a regular and 12 continuing basis.” SSR 96-8p, 1996 WL 374184, at *1 (July 2, 1996). It 13 reflects the most a claimant can do despite limitations. *Smolen*, 80 F.3d at 14 1291. An RFC determination must be based on all the relevant evidence, 15 including diagnoses, treatment, observations, and opinions of medical sources, 16 such as treating and examining physicians. 20 C.F.R. §§ 404.1545, 416.945. 17 The ALJ is responsible for translating and incorporating supported medical 18 evidence into a succinct RFC. *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 19 996, 1006 (9th Cir. 2015) (as amended). It is the ALJ’s responsibility to 20 resolve conflicts in the medical evidence and ambiguities in the record. *Ford*, 21 950 F.3d at 1149. When this evidence is “susceptible to more than one 22 rational interpretation,” the ALJ’s reasonable evaluation of the proof should 23 be upheld. *Ryan*, 528 F.3d at 1198. 24 The regulations for claims filed on or after March 27, 2017 apply here. 25 See Revisions to Rules Regarding Evaluation of Medical Evidence, 82 Fed.

26 Reg. 5844-01 (Jan. 18, 2017), 2017 WL 168819; 20 C.F.R §§ 404.1520c, 416.920c. These regulations provide that the ALJ will no longer “give any 27 specific evidentiary weight . . . to any medical opinion(s) . . .” Revisions to 28

1 Rules 82 Fed. Reg. 5844, at 5867-68, 2017 WL 168819; see 20 C.F.R.

2 §§ 404.1520c(a), 416.920c(a). Instead, an ALJ must consider and evaluate the 3 persuasiveness of all medical opinions or prior administrative medical 4 findings from medical sources. 20 C.F.R. §§ 404.1520c(a) & (b), 416.920c(a) & 5 (b). The factors for evaluating their persuasiveness include supportability, 6 consistency, relationship with the claimant (including length of treatment, 7 frequency of examinations, purpose of treatment, extent of treatment, and 8 existence of an

examination), specialization, and “other factors that tend to support or contradict a medical opinion or prior administrative medical finding” (including, but not limited to, “evidence showing a medical source has familiarity with the other evidence in the claim or an understanding of our disability program’s policies and evidentiary requirements”). 20 C.R.F. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5). Supportability and consistency are the most important factors when determining persuasiveness. *Woods v. Kijakazi*, 32 F.4th 785, 791 (9th Cir. 15 2022). Supportability and consistency are explained in the regulations: 16

(1) Supportability. The more relevant the objective medical

evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions or prior administrative medical finding(s) will be.

(2) Consistency. The more consistent a medical opinion(s) or prior

administrative medical finding(s) is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior administrative medical finding(s) will be. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2). The ALJ may, but is not required to, explain how the other factors were considered. §§ 404.1520c(b)(2), 416.920c(b)(2). 2. Dr. Lim’s Statements 2 On September 28, 2020, internist Seung Ha Lim conducted a consultative internal-medicine evaluation of Plaintiff. [AR 576-79.] Plaintiff 4 complained of diabetes, back pain, and blurry vision in both eyes. [AR 576.] 5 During the examination, her grip strength was 25 pounds with the right hand 6 and 20 pounds with the left. [AR 577.] Otherwise, her strength was “5/5 7 throughout without focal motor deficits.” [AR 578.] Her visual acuity was 8 20/40 in the right eye and 20/200 in the left. [AR 577.] She exhibited a slow 9 gait and complained of numbness of the lower extremities [AR 577-78] but 10 didn’t require use of an assistive device for ambulation [AR 579]. She had 11 “normal range of motion of the back” but exhibited “pain on motion.” [AR 12 578.] Her sensation was “decreased to soft touch in both lower extremities in 13 stocking distribution.”³ [Id.] She had an “absence of both ankle reflexes” [id.], 14 which Dr. Lim opined “suggest[ed] diabetic neuropathy” [AR 579]. Dr. Lim 15 noted that Plaintiff had “severely decreased visual acuity in the left eye and 16 moderately decreased visual acuity in the right eye that did not improve with 17 pinhole correction in the left eye.” [Id.] Dr. Lim further stated: 18 Based on available medical information, [Plaintiff], in my opinion, is restricted to standing and/or walking about 6 hours in an eight- 19 hour workday with appropriate breaks. [She] would be able to sit 20 for 6 hours in an eight-hour day with appropriate breaks. [She] would be able to lift and/or carry 20 pounds occasionally and 10 21 pounds frequently. Pushing and pulling is limited to occasional use of both lower extremities. [She] has postural limitations such 22 as occasional climbing and crouching. [She] has visual limitations 23 in the left eye. 24 [Id.] 25 26 3 The stocking distribution, or stocking-and-glove pattern, in peripheral neuropathy from diabetes refers to symptoms often starting in the feet and toes, 27 followed by the hands and fingers. When Nerves Get Damaged, Harvard Health

28 Publ'g: Harvard Med. Sch. (July 6, 2024), <https://www.health.harvard.edu/> 1 3. The ALJ's decision 2 The ALJ found Dr. Lim's 3 limitations on exertion, postural activities, and pushing and 4 pulling . . . persuasive. Dr. Lim's objective findings support these limitations; for example, based on the height and weight he 5 recorded, [Plaintiff's] body mass index . . . was 44.1. Similarly, 6 there was pain on range of motion in her back, her gait was slow, and in both lower extremities, sensation was decreased and ankle 7 reflexes were absent. Nonetheless, range of motion in [Plaintiff's] back and extremities was normal, motor function was intact, and 8 no edema, cardiac, or pulmonary deficits were noted. Further, Dr. 9 Lim's specific exertional, postural, and pushing/pulling limitations are consistent with other medical evidence as 10 discussed below. 11 Dr. Lim indicated that [Plaintiff] had "visual limitations in the left eye," presumably based on the uncorrected visual acuity 12 measurements of 20/40 on the right and 20/200 on the left. 13 However, this conclusion is not persuasive, for several reasons. First, it is non-specific and thus has limited probative value. 14 Moreover, [Plaintiff] denied wearing distance eye glasses and she 15 was able to visually move around Dr. Lim's office. Finally, the medical evidence discussed in Finding 3 reasonably suggests that 16 [Plaintiff's] visual impairments do not have more than a minimal 17 effect on her ability to do basic work activities. 18 [AR 21 (citations omitted).] 19 4. Analysis 20 Plaintiff is incorrect that the ALJ "did not provide a substantive 21 discussion of her evaluation of the consistency factor" for Dr. Lim's opinion. 22 [Dkt. 12 at 12.] The ALJ specifically stated that Dr. Lim's "exertional, 23 postural, and pushing/pulling limitations [we]re consistent with other medical 24 evidence as discussed below." [AR 21.] Plaintiff argues that this was 25 insufficient because the ALJ didn't make any "specific findings in this regard." 26 [Dkt. No. 12 at 12.] But the ALJ went on to discuss the "other" medical 27 opinions she found consistent. Specifically, she noted that Drs. J. Berry and 28 B. Vaghaiwalla opined that Plaintiff could engage in light exertion and 1 occasionally climb and operate foot controls, which is consistent with Dr. 2 Lim's opinion. [AR 22 (citing AR 100-02, 132-35).] 3 Plaintiff argues that the ALJ failed to discuss the consistency factor 4 with respect to the opined "visual limitations" in the left eye. [Dkt. No. 12 at 5 12 (citing AR 21); see AR 579.] First, Dr. Lim's statement is not a medical 6 opinion because it did not state "what [plaintiff] can still do despite [any] 7 impairment(s) and whether [plaintiff] ha[s] one or more impairment-related 8 limitations or restrictions" in her "ability to perform other demands of work," 9 §§ 404.1513(a)(2)(iii), 416.913(a)(2)(iii). Medical opinions no longer encompass 10 "symptoms, diagnosis, and prognosis" as did former governing 11 §§ 404.1527(a)(1) and 416.927(a)(1). Thus, the ALJ was not required to 12 evaluate or even consider the statement. See *Melissa M. v. Comm'r Soc. Sec.* 13 Admin., No. 2:24-cv-00528-JR, 2024 WL 4948851, at *2 (D. Or. Dec. 2, 2024) 14 (noting that revised regulations "more narrowly define" medical opinions and finding that doctor's statement was "not a medical opinion because it d[id] not 15 articulate any work-relevant functional limitations"); *Carl C. v. Comm. Soc. Sec.* 16 Sec., No. 2:21-cv-1454-DGE, 2022 WL 1134882, at *7 (W.D. Wash. Apr. 18, 17 2022) (finding that speech pathologist's statement was "not a medical

opinion” 18 under §§ 404.1513(a) and 416.913(a) “as it did not describe [p]laintiff’s 19 impairments or what he could still do despite his impairments”). 20 Further, even if Dr. Lim’s statement had been a medical opinion, the 21 ALJ sufficiently addressed the consistency factor. In finding that statement 22 not persuasive, the ALJ noted that the “medical evidence discussed in Finding 23 3 reasonably suggests that [Plaintiff’s] visual impairments do not have more 24 than a minimal effect on her ability to do basic work activities.” [AR 21.] It 25 was acceptable for the ALJ to reference other portions of her decision in 26 explaining her consideration of Dr. Lim’s opinion. See *Magallanes v. Bowen*, 27 881 F.2d 747, 755 (9th Cir. 1989) (ALJ not required to recite “incantation” 28 1 such as “I reject [this doctor’s] opinion about [this issue] because”). 2 Plaintiff argues that instead of “disregarding” Dr. Lim’s statement, the 3 ALJ was required to “translate the terms . . . based on a reasonable 4 interpretation of their meaning given the context of the report.” [Dkt. No. 12 5 at 13.] But this isn’t a case in which the doctor used a worker’s-compensation 6 term to describe the degree of accommodation required in language different 7 from Social Security terms. Dr. Lim’s statement that Plaintiff had “visual 8 limitations in the left eye” does not opine that those limitations affected her 9 ability to work or required any accommodations at all to do so. There was 10 nothing for the ALJ to translate. 11 Plaintiff argues that the ALJ “should have recontacted [Dr. Lim] for 12 further elaboration.” [Id.] When determining disability, the ALJ has a “duty 13 to fully and fairly develop the record and to assure that the claimant’s 14 interests are considered.” *Garcia v. Comm’r Soc. Sec.*, 768 F.3d 925, 930 (9th Cir. 2014) (citation omitted). An ALJ’s duty to develop the record is triggered 15 “when there is ambiguous evidence or when the record is inadequate to allow 16 for proper evaluation of the evidence.” *Mayes v. Massanari*, 276 F.3d 453, 17 459-60 (9th Cir. 2001) (as amended). 18 But “when claimants are represented by counsel, they must raise all 19 issues and evidence at their administrative hearings in order to preserve 20 them on appeal,” and courts will excuse failure to do so only “when necessary 21 to avoid a manifest injustice.” *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 22 1999) (as amended); see *Sanchez v. Berryhill*, No. 1:15-cv-00510-EPG, 2017 23 WL 1709326, at *3 (E.D. Cal. May 3, 2017) (“A manifest injustice is . . . an 24 error in the trial court that is direct, obvious, and observable[.]” (citation 25 omitted)). Plaintiff was represented by counsel at the hearing. [See AR 32.] 26 The ALJ specifically asked whether the record was complete, and counsel 27 responded that he had requested records from Orange County Foot & Ankle 28 1 and “other than that, the record is complete.” [AR 35-36.] And Plaintiff did 2 not raise the issue to the Appeals Council. [See AR 299-301.] Thus, Plaintiff 3 has waived her argument that the ALJ erred by not recontacting Dr. Lim. See 4 *Meanel*, 172 F.3d at 1115; see also *Juan R. v. Kijakazi*, No. 2:20-CV-11257- 5 GJS, 2022 WL 3018056, at *3 (C.D. Cal. July 29, 2022) (explaining that 6 “courts have determined that when counsel represents a claimant at the 7 hearing and indicates the record is ‘complete,’ the claimant waived any 8 challenge that the ALJ erred by not developing the record”; collecting cases). 9 And no manifest injustice arises from finding waiver here because, as 10 explained earlier, Plaintiff has not presented any evidence of

specific 11 limitations arising from her left-eye condition. 12 For all these reasons, the ALJ did not err in evaluating Dr. Lim's 13 opinion. 14 C. The ALJ Properly Evaluated Plaintiff's Subjective Symptom Statements and Testimony Concerning Her 15 Diabetic Polyneuropathy 16

1. Applicable Law

17 In the absence of proof of malingering, an ALJ may reject a litigant's 18 statements and testimony by identifying "specific, clear, and convincing" 19 reasons supported by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 20 678 (9th Cir. 2017) (as amended). This requires the ALJ to "specifically 21 identify the testimony [from a claimant] she or he finds not to be credible and 22 . . . explain what evidence undermines that testimony." *Lambert v. Saul*, 980 23 F.3d 1266, 1277 (9th Cir. 2020) (quoting *Treichler*, 775 F.3d at 1102); see also 24 *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (as amended). An 25 ALJ may consider a variety of factors in analyzing the believability of a 26 claimant's symptom testimony, including "ordinary techniques of credibility 27 evaluation." *Burch*, 400 F.3d at 680; *Evans v. Berryhill*, 759 F. App'x 606, 608 28 1 ALJ in the disability determination and may not affirm the ALJ on a ground 2 upon which [s]he did not rely." *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 3 2007). Courts, therefore, may not speculate on the basis for unexplained 4 conclusions but rather must consider only the reasoning actually given by the 5 ALJ. See *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014). 6 An ALJ can consider whether a lack of objective medical evidence 7 supports a claimant's allegations, but that "cannot form the sole basis" for 8 discounting subjective symptom testimony. *Burch*, 400 F.3d at 681; *Davis v. 9 Berryhill*, 736 F. App'x 662, 665 (9th Cir. 2018). If an ALJ impermissibly 10 relies "on one of several reasons in support of an adverse credibility 11 determination," the error is harmless if "the ALJ's remaining reasoning and 12 ultimate credibility determination were adequately supported by substantial 13 evidence in the record." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 14 1155, 1162 (9th Cir. 2008) (citation and emphasis omitted).

2. Plaintiff's Subjective Symptom Statements and

15 Testimony 16

In a March 7, 2020 Exertion Questionnaire, Plaintiff stated that she 17 lived in a house with family. [AR 381.] She "tr[ie]d to walk" but "d[id]n't 18 really know how far [she] could walk" and "ha[d] to take breaks in between." 19 [Id.] She could climb stairs but got "out ove [sic] breathe [sic]" and "tr[ie]d to 20 only go up the stairs once a day." [AR 382.] She could lift "nothing heavy." 21 [i.] She did her own grocery shopping alone when getting "something for that 22 day," but her husband went with her when she shopped "for the week." [i.] 23 She cooked at home, but it took her three hours. [Id.] She was able to 24 "sweep," but it "t[ook her] a while" because of her wrist, shoulder, and leg. 25 [Id.] She took her child to school, or her child would drive and Plaintiff would 26 drive home alone. [Id.] She watered her plants "if not to [sic] cold," as the 27 "cold bother[ed her] back and left leg & side." [Id.] She slept seven hours, but 28 1 required rest or naps during the day "depend[ed] on how cold" it was because 2 her "left side

hurt[] and burn[ed].” [Id.] She used a brace when it was cold or 3 when her back hurt. [Id.] Her left side burned, her back bothered her, and 4 her “hand & wrist hurt.” [Id.] She couldn’t get comfortable because of her left 5 shoulder and leg. [AR 384.] In a December 3, 2020 Disability Report, 6 Plaintiff stated that she had been “using [a] cane since 10-29-2020.” [AR 388.] 7 In a December 27, 2020 Exertion Questionnaire, Plaintiff stated that 8 her left side “always fe[lt] like” it was “on fire.” [AR 396.] Her lower back 9 hurt “a lot,” and her right hands and wrists hurt. [Id.] Her “feet up to [the] 10 middle of [her] calf” were “numb and so [were her] hands.” [AR 396, 398.] 11 She couldn’t “keep a straight line while writing” if she took her medications 12 during the day. [AR 398.] She “just want[ed] to sleep and not do anything 13 [but] just stay in [her] bed.” [Id.] She was “always tired” and didn’t “want to 14 do anything.” [Id.] She didn’t “do much around the house,” but she did “try to wash dishes, sweep and wash clothes but it t[ook] all day,” so “most of the 15 time” her “daughter help[ed her].” [AR 396.] She “use[d] a cane to walk 16 around,” and her “therapist told [her] to use” it so she wouldn’t “fall and lose 17 [her] balance.” [Id.] She “use[d] the basket for support” at the store. [Id.] 18 She climbed stairs “only once . . . to gat [sic] to sleep,” and “half way up [she 19 was] sometimes out of breath.” [AR 397.] She did her own grocery shopping, 20 but someone went with her so she was “not carrying anything heavy.” [Id.] 21 She cleaned her own home, but her daughter helped her “finish what [she] 22 d[id]n’t finish.” [Id.] She “sometimes” watered her plants “just to get out and 23 feel the sun . . . for a few minutes” because she “g[o]t cold and [her] leg & back 24 hurt.” [Id.] She had difficulty finishing her housework because she would “sit 25 and then not want to get back up to finish,” as her back and the “left side of 26 [her] body [were] not wanting to get up.” [AR 399.] She slept between four 27 and five hours and “toss[ed] and turn[ed] most of the night.” [Id.] She 28 1 “sometimes” needed rest periods or naps during the day. [Id.] She used a 2 cane to walk “to avoid . . . losing [her] balance” and used a brace on her right 3 hand when her “hand and wrist hurt a lot [m]ybe [sic] 2-3 weeks at a time.” 4 [AR 399-400.] The left side of her body “just burn[ed] all day & night and 5 [her] back really bother[ed her] and so [did her] right hand & left arm.” [AR 6 399.] 7 In a January 7, 2021 Exertional Questionnaire, Plaintiff’s answers were 8 essentially unchanged. She stated that her feet and hands were numb, it was 9 “hard to put [on] and take off [her] bra,” and someone helped her do it. [AR 10 401-02.] She didn’t “do much around the house” but tried to “wash dishes,” 11 “sweep,” and “wash clothes.” [AR 401.] She didn’t fold laundry. [Id.] It took 12 “all day” to do the dishes, sweeping, and clothes, and she sat and took breaks. 13 [Id.] She didn’t “do much lifting” and “always carr[ied] the bag that ha[d] less 14 in it so [she] ha[d] a lot of bags.” [AR 403.] She could carry “not much and not far.” [Id.] She tried to go to the grocery store “every three days” with 15 someone. [Id.] She tried to water her plants outside “every three days.” [Id.] 16 She had difficulty finishing housework because she “worried [she] w[ould] 17 drop something and . . . loose [sic] balance and fall.” [AR 404.] She found it 18 “very hard to do everyday things like put on a bra [and] tie [her] shoes.” [AR 19 405.] Her left shoulder, left thumb, right wrist, and lower back hurt. [Id.] 20 The numbness in her feet and hands made it “hard

to function.” [Id.] 21 In a March 4, 2021 Disability Report, Plaintiff stated that she “f[ou]nd 22 [her]self using the cane more often[] and going to physical therapy.” [AR 409.] 23 She had a growth on both feet. [Id.] She didn’t go for walks anymore because 24 she was “afraid to fall or loose [sic] balance.” [AR 415.] She took a long time 25 to finish household tasks because she was “taking a lot of breaks,” and “at the 26 end of the day” she was “just exhausted with doing the bare minimum.” [Id.] 27 She “experience[d] a lot of pain and [a] burning sensation in [the] left side of 28 1 the body.” [Id.] 2 Plaintiff testified at the May 2022 hearing that she had swelling inside 3 her eyes and received a shot in each eye “every six weeks to control the 4 swelling so that [she] d[id]n’t lose [her] eyesight.” [AR 38.] But it was “back 5 pain” “and [her] foot” that “mainly prevented [her] from continuing to work.” 6 [Id.] She had “something on [her] foot that [she] c[ould]n’t stand very long,” 7 and she “c[ould]n’t sit very long.” [Id.] If she was sitting on a chair that 8 didn’t have a cushion, she had to “get up and move around, and then . . . sit 9 back down.” [Id.] Then she would “get up and move around.” [Id.] The “pain 10 [was] just too much” as it related to her back. [Id.] She lived in a house with 11 stairs, but she “only [went] up once and c[a]me down once” a day. [AR 39.] 12 She came down in the morning and went “back up when [she was] ready to go 13 to bed.” [Id.] She hung onto the rail and went up “very carefully” because she 14 had “slipped twice.” [Id.] Her husband and three grown children lived with her. [Id.] She drove herself when she had to go to the doctor’s office and there 15 was “nobody [t]here and it [was] close by.” [AR 39-40.] But someone “usually” 16 took her. [AR 40.] She had no problems driving, but she couldn’t drive herself 17 back when she needed to get shots in her eyes. [Id.] 18 She had a “mass at the bottom of the arch” of her foot that was “bulging 19 out.” [AR 41.] When she wore shoes, it “bother[ed her] because” it “rub[bed] 20 up on the . . . shoe . . . every time [she] walk[ed], every time [she] move[d].” 21 [Id.] Her foot was swollen, and the left side of her body was “always on fire.” 22 [Id.] The mass on her foot was “getting bigger.” [AR 42.] 23 She also had problems with her hands and back and was “recently 24 diagnosed” with fibromyalgia. [Id.] She had neuropathy in her hands and 25 feet. [Id.] The left side of her body was “always more swollen than the right.” 26 [AR 43.] 27 She could stand for “maybe half an hour” before needing to sit. [Id.] 28 1 How long she needed to sit depended on what kind of chair it was. [Id.] She 2 could sit for half an hour “give or take.” [Id.] She used a cane “most of the 3 time to walk” because she “tend[ed] to kick the floor sometimes” and “take a 4 dive.” [AR 44.] She used a cane to “make sure that [she] d[id]n’t lose [her] 5 balance.” [Id.] 6 She first testified that she didn’t do household chores but clarified that 7 “[i]f [she did], it t[ook] . . . all day” or “a while” to do them. [AR 45.] 8 Showering and dressing took “a little longer . . . because of [her] back 9 situation.” [AR 46.] It took a “long time to take the bra off, put it back on; put 10 the pants on, take them off.” [Id.] It was the “[s]ame thing with socks.” [Id.] 11 “Shoes . . . t[ook] a longer time.” [Id.] 12 3. The ALJ’s Decision 13 The ALJ found that Plaintiff’s 14 medically determinable impairments could reasonably be expected to cause the alleged symptoms. However, [her] 15 statements concerning the intensity, persistence and limiting 16 effects of these symptoms [we]re

not entirely consistent with the medical evidence and other evidence in the record. 17 [AR 21.] She partially discounted Plaintiff's subjective symptom 18 statements and testimony because they were inconsistent with the objective 19 medical evidence, her conservative treatment, her noncompliance with 20 treatment recommendations, and her improvement with treatment. [See AR 21 22-24.] 22

4. Analysis

23 Plaintiff contends that the ALJ did not properly evaluate her 24 statements and testimony concerning her diabetic neuropathy. [Dkt. No. 12 25 at 14-18.] She does not challenge the ALJ's evaluation of her statements and 26 testimony concerning her other impairments. The ALJ did not err..] 27 28 1 a) Objective Medical Evidence 2 The ALJ properly discounted Plaintiff's subjective symptom statements 3 and testimony because they were at least in part inconsistent with the 4 objective medical evidence. See *Kitchen v. Kijakazi*, 82 F.4th 732, 739 (9th

5 Cir. 2023) (ALJ's conclusion that objective medical evidence was inconsistent

6 with plaintiff's symptom statements was specific, clear, and convincing reason 7 for discounting his statements). "After careful consideration of the entire 8 record," the ALJ found some of Plaintiff's subjective symptom statements and 9 testimony unsupported by and inconsistent with that evidence. [AR 20; see 10 AR 21-24]; see also *Bell-Shier v. Astrue*, 312 F. App'x 45, 49 (9th Cir. 2009) 11 (upholding ALJ's rejection of plaintiff's pain and limitation claims when ALJ 12 "examine[d] the entire record"). 13 During Dr. Lim's September 28, 2020 consultative internal-medicine 14 evaluation, Plaintiff's range of motion in the back and extremities was 15 normal, and motor function was intact. [AR 21 (citing AR 578).] Her grip strength was 25 pounds with the right hand and 20 pounds with the left [AR 16 577], but otherwise her strength was "5/5 throughout without focal motor 17 deficits" [AR 578]. In May 2021, neurologist Surjit Kahlon evaluated 18 Plaintiff. [AR 22 (citing AR 968-71).] Plaintiff exhibited 4+ to 5/5 motor 19 strength on the right side, "weak" left grip, decreased reflexes in all 20 extremities, withdrawn plantars, and "somewhat decreased" and "somewhat 21 inconsistent" sensation. [AR 22 (citing AR 969).] The strength findings of 22 "5/5 throughout" were at least somewhat inconsistent with Plaintiff's claims 23 in the March 2020 Exertion Questionnaire that she could lift "nothing heavy" 24 [AR 382] and the December 2020 Exertion Questionnaire that someone went 25 shopping with her so that she was "not carrying anything heavy" [AR 397]. 26 Moreover, the reduced grip-strength findings do not diminish that 27 inconsistency: 28 1 Grip strength is not synonymous with lifting ability. Grip strength 2 measures the force grip of a hand and represents the power of squeezing 3 between the thumb and fingers. Lifting involves picking up a load with the 4 legs, arms, and torso. *Hope v. Astrue*, No. ED CV 10-93 PJW., 2011 WL 5 2135054, at *1 (C.D. Cal. May 31, 2011) (citations omitted); see also 6 *Bauslaugh v. Astrue*, No. EDCV 09-1853-MLG., 2010 WL 1875800, at *5 (C.D. 7 Cal. May 11, 2010) (noting that "[l]ifting and carrying is defined by the Social 8 Security Regulations as an exertional limitation, while fingering and grasping 9 is a nonexertional limitation. Thus, under the Regulations, the ability to grip 10 and grasp is not

related to the ability to lift and carry”). 11 The ALJ noted that although a slow gait was observed by Dr. Lim and 12 in the physical-therapy records, “persistent gait abnormalities [we]re not 13 documented elsewhere in the medical record.” [AR 23.] Indeed, Plaintiff was 14 often noted to have a “normal gait.” [See AR 696 (Aug. 2021), 700 (May 2021), 704 (Apr. 2021), 1185 (Nov. 2021), 1182 (Feb. 2022).] These normal gait 15 findings are inconsistent with Plaintiff’s claim in her December 2020 Exertion 16 Questionnaire that her diabetic neuropathy caused gait problems. [AR 396.] 17 For all these reasons, the ALJ properly partially discounted Plaintiff’s 18 subjective symptom statements and testimony concerning her diabetic 19 neuropathy because they were at least in part inconsistent with the objective 20 medical evidence. See *Brown-Hunter*, 806 F.3d at 493; *Kitchen*, 82 F.4th at 21 739. Moreover, any error was harmless because as explained below, the ALJ 22 gave three other valid reasons for discounting Plaintiff’s subjective symptom 23 statements and testimony. See *Howland v. Saul*, 804 F. App’x 467, 470-71 24 (9th Cir. 2020) (holding that ALJ’s error in relying on claimant’s daily 25 activities to discount her subjective symptom testimony was harmless because 26 ALJ offered other specific, clear, and convincing reasons for doing so). *Id.* 27 28 1 b) Conservative Treatment 2 Routine, conservative treatment can be enough to discount a claimant’s 3 subjective testimony regarding the limitations caused by an impairment. 4 *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007). Not seeking an 5 “aggressive treatment program” permits the inference that symptoms were 6 not “as all-disabling” as the claimant reported. *Tommasetti v. Astrue*, 533 7 F.3d 1035, 1039 (9th Cir. 2008). The amount of treatment is “an important 8 indicator of the intensity and persistence of [a claimant’s] symptoms.” 9 §§ 404.1529(c)(3), 416.929(c)(3). If, however, the claimant has a good reason 10 for not seeking more aggressive treatment, conservative treatment is not a 11 proper basis for rejecting the claimant’s subjective symptoms. *Carmickle*, 533 12 F.3d at 1162. 13 The ALJ noted that although electrodiagnostic studies in June 2021 14 “suggested sensory neuropathy,” Plaintiff’s neurologist recommended only 15 that Plaintiff “follow up” with pain management and see the neurologist “as needed.” [AR 22 (citing AR 989-90).] Nothing shows that Plaintiff sought 16 treatment for sensory neuropathy after July 2021, as Defendant notes [Dkt. 17 No. 19 at 11], or that she had a good reason for not doing so in light of her 18 claim that her neuropathy was disabling. Therefore, the ALJ did not err in 19 discounting Plaintiff’s subjective symptom statements and testimony as 20 inconsistent with her conservative treatment for her diabetic neuropathy.. 21 c) Noncompliance with prescribed treatment 22 An ALJ may rely on an “unexplained or inadequately explained failure 23 to seek treatment or to follow a prescribed course of treatment.” *Ghanim v. 24 Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014). The ALJ noted that medical 25 records showed compliance issues with Plaintiff’s diabetes treatment [AR 22- 26 23 (citing AR 581, 1060, 1066, 1071, 1079)], suggesting that her symptoms 27 were not particularly bothersome. Despite her complaints of disabling pain, 28 1 Plaintiff specifically declined pain-management injections from her pain- 2 management physician. [AR 23 (citing AR 666, 671).] She has offered no 3 explanation, much less an adequate one, for failing to follow her

prescribed 4 course of treatment. Therefore, the ALJ did not err in considering this failure 5 in discounting her subjective symptom statements and testimony. Ghanim, 6 763 F.3d at 1163. 7 d) Improvement with treatment 8 Next, the ALJ properly considered that Plaintiff's conditions were 9 controlled or responsive to treatment. [AR 23]; see *Wellington v. Berryhill*, 878 10 F.3d 867, 876 (9th Cir. 2017) (“[E]vidence of medical treatment successfully 11 relieving symptoms can undermine a claim of disability.”); *Presley-Carrillo v. 12 Berryhill*, 692 F. App'x 941, 945 (9th Cir. 2017) (upholding discounting of 13 claimant's testimony concerning disabling nature of symptoms when it 14 conflicted with effective treatment). Plaintiff's A1C level was at goal within 15 six months of an initial endocrinology consultation, as the ALJ noted. [AR 23 (citing AR 1016, 1022, 1113, 1124).] And Plaintiff's neurologist found that 16 physical and occupational therapy “helped a lot” with Plaintiff's symptoms, 17 although she remained symptomatic. [Id. (citing AR 695).] Physical therapy 18 records also indicated improvement. [Id. (citing AR 839-42, 901, 1123).] 19 Further, the ALJ specifically noted that gait improvement was observed 20 in the physical therapy records. [Id. (citing AR 838, 878).] Plaintiff argues 21 that “while [her] gait improved during therapy, it was still 75% of normal at 22 the time of discharge from the program.” [Dkt. No. 12 at 18.] But even 75 23 percent of normal was inconsistent with the statements in Plaintiff's 24 December 27, 2020 Exertion Questionnaire that she needed to “use a cane to 25 walk around” so she didn't “fall and lose [her] balance” [AR 396] and “use[d] 26 the basket for support” at stores [id.]. It was also inconsistent with the 27 statement in Plaintiff's March 4, 2021 Disability Report that she couldn't go 28 1 for walks anymore because she was “afraid to fall or loose [sic] balance.” [AR 2 415.] And as noted, Plaintiff was often found to have a “normal gait,” 3 including during the latter part of the relevant period. [See AR 696 (Aug. 4 2021), 700 (May 2021), 704 (Apr. 2021), 1185 (Nov. 2021), 1182 (Feb. 2022).] 5 Therefore, the ALJ did not err in discounting Plaintiff's subjective symptom 6 statements and testimony concerning her diabetic neuropathy based on her 7 improvement with treatment. 8 For all these reasons, the ALJ properly evaluated Plaintiff's subjective 9 symptom statements and testimony concerning her diabetic neuropathy. 10 D. The ALJ Properly Resolved an Apparent Conflict Between 11 the VE's Testimony and the Dictionary of Occupational Titles 12 Plaintiff argues that the ALJ erred in failing to resolve an apparent 13 conflict between the VE's testimony that a “person limited to occasional 14 reaching with the left upper extremity could perform work as a photographer” 15 and the “DOT[']s desc[ription of the] occupation.” [Dkt. No. 12 at 19.] For the 16 reasons discussed below, the ALJ did not err. 17

1. Applicable law

18 The photographer job requires reaching “[f]requently,” or “from 1/3 to 19 2/3 of the time.” See DOT 143.062-030, 1991 WL 647131 (Jan. 1, 2016). 20 “When there is an apparent conflict between the vocational expert's 21 testimony and the DOT — for example, expert testimony that a claimant can 22 perform an occupation involving DOT requirements that appear more than 23 the claimant can handle — the ALJ is required to reconcile the inconsistency.” 24 *Lamear v. Berryhill*,

865 F.3d 1201, 1206 (9th Cir. 2017) (citation omitted). 25 [N]ot all potential conflicts between an expert's job suitability 26 recommendation and the [DOT's] listing of maximum requirements for an occupation will be apparent or obvious. [A]n 27 ALJ need only follow up on those that are. 28 1 Gutierrez v. Colvin, 844 F.3d 804, 807-08 (9th Cir. 2016) (citation 2 omitted). 3 2. The VE's testimony 4 At the May 2022 hearing, the ALJ questioned the VE as follows: 5 Q. . . . If we assume a hypothetical person who was 48 6 years old at her alleged onset date, has some college education, is literate, speaks English, and can perform the demands of work 7 within the following RFC. She can lift and/or carry 20 pounds occasionally, 10 pounds frequently. She can do frequent reaching, 8 handling, fingering, feeling, pushing, and pulling with the right 9 dominant upper extremity. She can occasionally use the left hand for reaching, pushing, and pulling, but can frequently use the left 10 hand for handling, fingering, and feeling. She can do occasional 11 foot pedals bilaterally. She can occasionally climb ramps and stairs, ladders, ropes, and scaffolds. She can occasionally crouch, 12 but can frequently stoop, kneel, crouch, and crawl. She can stand, 13 walk, and or sit six hours out of an eight-hour day each. Could this person do [Plaintiff's] past-relevant work [as a 14 photographer]? 15 A. Yes. Q. And that'd be both per the DOT and as actually 16 performed? 17 A. That's correct, Judge, yes. Q. And the disparity in the reaching, handling, and 18 fingering between the right and left upper extremity is more per 19 your own experience than [sic] per the DOT because the DOT does not make that distinction. Is that correct? 20 A. That's correct. And based on what you told me, and 21 then combining that with my professional experiences, I felt there'd be no impact on doing their past — usual and customary 22 work. 23 [AR 48-49.] 24

3. The ALJ's decision

25 The ALJ found that Plaintiff could perform her past relevant work as a 26 photographer: 27 After comparing [Plaintiff's] residual functional capacity with the 28 physical and mental demands of this work, and based on the 1 vocational expert's testimony, the undersigned finds that [Plaintiff] is able to perform it as actually and generally 2 performed. 3 The vocational expert confirmed that the DOT does not distinguish right from left with respect to reaching, handling, and 4 fingering requirements and that his testimony regarding this 5 subject reflected his professional experience. Pursuant to SSR 00- 4p, the undersigned relies on the vocational expert's documented 6 qualifications in accepting this testimony. 7 [AR 24.] 8

4. Analysis

9 The ALJ recognized an apparent conflict between the VE's testimony 10 and the DOT because she directly questioned the VE about the "disparity" 11 between the reaching, handling, and fingering abilities with the right versus 12 the left upper extremity. [AR 48-49.] And the VE testified that based on 13 "what [the ALJ] told [him] combin[ed] with [the VE's] professional 14 experiences," there would be "no impact on doing" the photographer job. [AR 15 49.] In her decision, the ALJ noted the VE's explanation of the apparent 16 conflict and "[p]ursuant to SSR 00-4p," expressly "relie[d] on the vocational 17 expert's documented qualifications in accepting

this testimony.” [AR 24.] The ALJ reasonably relied on the VE’s expertise and experience. *Biestek*, 587 U.S. 19 at 105 (VE’s “testimony may count as substantial evidence even when 20 unaccompanied by supporting data”); *Bayliss v. Barnhart*, 427 F.3d 1211, 21 1218 (9th Cir. 2005) (“An ALJ may take administrative notice of any reliable 22 job information, including information provided by a VE.”). The VE had over 23 40 years of experience as a vocational consultant and counselor [AR 449-51], 24 and Plaintiff did not object to his qualifications to testify [AR 46-47] or to that 25 specific testimony [see AR 48-49]. The DOT description of the photographer 26 job doesn’t state whether the frequent reaching involved can be done 27 primarily with one hand, as the VE acknowledged. [Id.] But the VE testified 28 that it could, based on his education and vocational-consulting experience. 1 [Id.] The ALJ reasonably relied on this expertise. *Biestek*, 587 U.S. at 105; 2 *Bayliss*, 427 F.3d at 1218. 3 Plaintiff is incorrect that *Lamear* requires a different result. In 4 *Lamear*, a VE testified that the plaintiff, who could only occasionally handle, 5 finger, and reach with his nondominant hand, could perform the jobs of office 6 helper, mail clerk, and parking-lot cashier, all of which required frequent 7 handling, fingering, and reaching. 865 F.3d at 1203. The ALJ did not ask the 8 VE to reconcile any potential conflict, and the VE did not offer any 9 explanation. *Id.* at 1204. The Ninth Circuit concluded that the ALJ’s failure 10 to ask the VE about the conflict was reversible error because it could not 11 determine from the record whether the jobs in question required use of both 12 hands on a frequent basis. *Id.* at 1206-07. In contrast, here the ALJ asked 13 the VE about the potential conflict, and the VE resolved it based on his 14 expertise. Importantly, Plaintiff’s counsel had an opportunity to cross-examine the 15 vocational expert on this issue. Indeed, counsel questioned the VE on other 16 issues but did not raise any perceived inconsistencies between the VE’s 17 testimony and the reaching requirements in the DOT job description. [AR 51- 18 52]; see *Solorzano v. Astrue*, No. ED CV 11-369-PJW., 2012 WL 84527, at *6 19 (C.D. Cal. Jan. 10, 2012) (“[Counsel] have an obligation to take an active role 20 and to raise issues that may impact the ALJ’s decision while the hearing is 21 proceeding so that they can be addressed.”). The ALJ was therefore entitled 22 to rely on the vocational expert’s testimony. See *Solorzano*, 2012 WL 84527, 23 at *6 (“Counsel are not supposed to be potted plants at administrative 24 hearings.”). The ALJ did not err. 25 26 27 28

1 | Iv. CONCLUSION

2 Consistent with the foregoing and under sentence four of 42 U.S.C. 3 § 405(g), IT IS ORDERED that judgment be entered AFFIRMING 4 the Acting Commissioner’s decision, DENYING Plaintiffs request for > || remand, and DISMISSING this action with prejudice. 6 7 DATED: March 20, 2025 44 ty Lena koe

9 PATRICIA DONAHUE

10 United States Magistrate Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 sO