

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

Jennie C. v. Frank Bisignano, Commissioner of Social Security

Jennie C. v. Bisignano, Case No. 25-cv-02632-DMR (N.D. Cal. Dec. 30, 2025) · No. 25-cv-02632-DMR ·
Decided December 30, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6
JENNIE C.,¹ 7 Case No. 25-cv-02632-DMR Plaintiff, 8 v. ORDER ON CROSS MOTIONS FOR
9 SUMMARY JUDGMENT FRANK BISIGNANO, Commissioner of 10 Social Security, Re:
Dkt. Nos. 10, 15 11 Defendant. 12 Plaintiff Jennie C. moves for summary judgment to reverse the
Commissioner of the Social 13 Security Administration’s (the “Commissioner’s”) final
administrative decision, which found 14 Plaintiff not disabled between January 31, 2015 and
January 23, 2019, and therefore denied her 15 application for benefits under Title XVI of the
Social Security Act, 42 U.S.C. § 1381 et seq. for that 16 period.

[Docket No. 10-1 (Pl. Br.).]² The Commissioner cross-moves to affirm. [Docket No. 15 17 (Def.
Br.).] For the reasons stated below, the court denies Plaintiff’s motion and grants the 18
Commissioner’s cross-motion. 19 I. PROCEDURAL HISTORY 20 Plaintiff filed an application
for Supplemental Security Income (“SSI”) benefits on June 29, 21 2015, alleging disability
beginning January 31, 2015.

Administrative Record (“AR”) 176–78. An 22 Administrative Law Judge (“ALJ”) held a hearing
on July 11, 2017 (AR 40–83) and issued an 23 24 1 Partially redacted in compliance with Federal
Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court
Administration and Case Management of the Judicial 25 Conference of the United States.

26 2 Although Civil Local Rule 7-2(b) requires parties to file “one filed document... contain[ing],”
among other things, the notice of motion and “points and authorities in support of the motion,” 27
Plaintiff filed her notice of motion and opening brief as separate documents. [Docket No. 10
(Notice 1 unfavorable decision on February 9, 2018 (AR 16–39). Plaintiff appealed and, on May
5, 2020, this 2 court affirmed the ALJ’s decision.

AR 970–82; *Contreras v. Berryhill* (“*Contreras I*”), Case No. 3 19-cv-00305-DMR, Docket No.
25. 4 Plaintiff appealed the court’s order to the U.S. Court of Appeals for the Ninth Circuit. 5
Contreras v. Kijakazi (“*Contreras II*”), Case No. 20-16300.

On July 28, 2021, the Ninth Circuit 6 granted the parties’ joint motion for vacatur and remand to
this court, “with instructions to remand 7 to the agency for further proceedings consistent with the

United States Supreme Court’s decision in 8 Carr v. Saul, 141 S. Ct. 1352 (2021).” Contreras II, Docket No. 32.

The Ninth Circuit did not 9 reach the merits of Plaintiff’s appeal. 10 On September 17, 2021, this court remanded the case to the Social Security Administration 11 for further proceedings consistent with Carr. Contreras I, Docket No. 32.

On April 12, 2022, the 12 Appeals Council vacated the Commissioner’s final decision and, consistent with the U.S. Supreme 13 Court’s ruling in Carr, remanded the case for a new hearing with a different ALJ than the one who 14 issued the February 9, 2018 decision. AR 985 (“While the case was pending in federal court, the 15 claimant raised a challenge under the Appointments Clause of the Constitution, U.S. Art. II § 2, 16 cl.

2, to the manner in which the Administrative Law Judge was appointed. In accordance with the 17 district court’s remand order, this case is remanded to a different Administrative Law Judge in light 18 of the ruling in Carr v. Saul, 593 U.S. ____ (2021).”). 19 The ALJ held a hearing on September 20, 2023. AR 916–45.

On October 17, 2023, ALJ 20 issued an unfavorable decision. AR 885–915. The ALJ determined that Plaintiff has the following 21 severe impairments: degenerative disc disease of the cervical spine status post anterior cervical 22 discectomy and fusion, degenerative disc disease of the lumbar and thoracic spine, obesity, carpal 23 tunnel syndrome status post releases, asthma, and chronic obstructive pulmonary disease.

AR 891. 24 The ALJ found that Plaintiff retains the following residual functional capacity (“RFC”): 25 [Plaintiff could] perform light work as defined in 20 CFR 416.967(b) except she should not climb ladders, ropes, and scaffolds. She could 26 occasionally climb ramps and stairs. She should not be required to balance as defined in the SCO [Selected Characteristics of 27 Occupations]/DOT [Dictionary of Occupational Titles].

She could unprotected heights or have the operational control of moving, 1 dangerous machinery. She should not work around concentrated levels of fumes, odors, dusts, gases, and poor ventilation. 2 3 AR 897. 4 The ALJ further found that, “[p]rior to the established disability onset date, the claimant was 5 an individual closely approaching advanced age.” AR 904; see 20 C.F.R. § 416.963(d) (a “[p]erson 6 closely approaching advanced age” is “age 50–54”).

However, “[o]n January 24, 2019, [Plaintiff’s] 7 age category changed to an individual of advanced age.” AR 904; see 20 C.F.R. § 416.963(e) (a 8 “[p]erson of advanced age” is “age 55 or older”). 9 A vocational expert (“V.E.”) testified that, prior to January 24, 2019, an individual with 10 Plaintiff’s RFC could perform other jobs existing in the economy, including Sales Attendant, 11 Marker, and Cashier II.

AR 904–05, 939–41. Relying on this testimony, the ALJ concluded that Plaintiff “was not disabled prior to January 24, 2019, but became disabled on that date and has continued to be disabled through the date of [the ALJ’s] decision.” AR 905–06. After the Appeals Council denied review (AR 1013–18), Plaintiff sought review in this court pursuant to 42 U.S.C. § 405(g).

II. ISSUES FOR REVIEW Plaintiff argues the ALJ erred when she (1) afforded little weight to the opinion of Plaintiff’s treating physician, Dr. Juan Posada, M.D., (2) found that Plaintiff’s testimony was not credible, and (3) posed incomplete hypothetical questions to the VE, which resulted in unreliable testimony. III. STANDARD OF REVIEW Pursuant to 42 U.S.C. § 405(g), this court has the authority to review a decision by the Commissioner denying a claimant disability benefits. “This court may set aside the Commissioner’s denial of disability insurance benefits when the ALJ’s findings are based on legal error or are not supported by substantial evidence in the record as a whole.” *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.

1999) (citations omitted). Substantial evidence is evidence within the record that could lead a reasonable mind to accept a conclusion regarding disability status. See *Richardson v. Perales*, 402 U.S. 389, 401 (1971). It is more than a mere scintilla, but less than a preponderance. See 1 performing this analysis, the court must “consider the entire record as a whole and may not affirm 2 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*

Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (cleaned up). 4 If the evidence reasonably could support two conclusions, the court “may not substitute its 5 judgment for that of the Commissioner” and must affirm the decision. *Jamerson v. Chater*, 112 F.3d 1064, 1066 (9th Cir. 1997) (citation omitted). “Finally, the court will not reverse an ALJ’s 7 decision for harmless error, which exists when it is clear from the record that the ALJ’s error was 8 inconsequential to the ultimate nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.

2008) (cleaned up). IV. DISCUSSION Plaintiff seeks review of the ALJ’s finding that Plaintiff was not disabled between her 12 alleged onset date of January 31, 2015 through January 23, 2019. Pl. Br. at 3. A. The ALJ’s Weighing of Medical Evidence Plaintiff argues the ALJ failed to provide clear and convincing reasons for discounting the 15 opinion of treating physician J. Posada, M.D.

1. Legal Standard “For social security disability claims filed prior to March 27, 2017, an ALJ is required to 18 assess medical opinions ‘based on the extent of the doctor’s relationship with the claimant.’” 19 *Cross v. O’Malley*, 89 F.4th 1211, 1214 (9th Cir. 2024) (quoting *Woods v. Kijakazi*, 32 F.4th 785, 789 (9th Cir. 2022)).

As Plaintiff filed her application for disability benefits on June 29, 2015, the 21 pre-March 27, 2017 framework applies. See AR 176–78. Under this framework, courts distinguish 22 between

three types of physicians: those who treat the claimant (“treating physicians”) and two 23 categories of “nontreating physicians,” those who examine but do not treat the claimant (“examining 24 physicians”) and those who neither examine nor treat the claimant (“non-examining physicians”).

25 See *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995), as amended (Apr. 9, 1996). A treating 26 physician’s opinion is entitled to more weight than an examining physician’s opinion, and an 27 examining physician’s opinion is entitled to more weight than a non-examining physician’s opinion. 1 “If the opinion of an examining doctor is contradicted by another doctor, it ‘can only be 2 rejected for specific and legitimate reasons that are supported by substantial evidence in the record.’” 3 *Ford v. Saul*, 950 F.3d 1141, 1155 (9th Cir.

2020) (quoting *Lester*, 81 F.3d at 830–31). “An ALJ 4 needs less substantial evidence to reject an examining physician’s opinion than to reject an [sic] 5 treating physician’s opinion.” *Id.* The ALJ can meet her burden “by setting out a detailed and 6 thorough summary of the facts and conflicting clinical evidence, stating [her] interpretation thereof, 7 and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.

1998). “[B]road and vague” 8 reasons do not suffice. *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989). A non-examining 9 physician’s opinion alone cannot constitute substantial evidence to reject the opinion of an 10 examining or treating physician, *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th Cir. 1990); *Gallant v. 11 Heckler*, 753 F.2d 1450, 1456 (9th Cir.

1984), though a non-examining physician’s opinion may be 12 persuasive when supported by other factors. See *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th 13 Cir. 2001) (noting that opinion by “non-examining medical expert... may constitute substantial 14 evidence when it is consistent with other independent evidence in the record”); *Magallanes v. 15 Bowen*, 881 F.2d 747, 751–55 (9th Cir.

1989) (upholding rejection of treating physician’s opinion 16 given contradictory laboratory test results, reports from examining physicians, and testimony from 17 claimant). An opinion that is more consistent with the record as a whole generally carries more 18 persuasiveness. See 20 C.F.R. § 416.927(c)(4). 19 2. Analysis 20 Treating physician Dr. Posada submitted two medical source statements dated May 8, 2017 21 and July 25, 2017.

AR 429–32, 656–61. In each, Dr. Posada indicated that his first appointment 22 with Plaintiff was on April 4, 2016. AR 429, 657. 23 In his May 8, 2017 medical source statement, Dr. Posada diagnosed Plaintiff with carpal 24 tunnel syndrome, cervical spine stenosis, sciatica, chronic back pain, asthma, migraines, chronic 25 depression, and knee pain. AR 429. He opined that Plaintiff could walk half a block without rest 26 or severe pain; sit for 6–7 minutes at a time before needing to get up; stand for 8 minutes at a time 27 without needing to sit down or walk around; and sit,

stand, and walk for less than one hour total in 1 10 pounds and never lift more than 10 pounds; occasionally look down; rarely turn her head right 2 or left, look up, or hold her head in a steady position; rarely twist; and never stoop, crouch, climb 3 ladders, or climb stairs.

AR 431. Dr. Posada indicated that Plaintiff's symptoms would constantly 4 interfere with the attention and concentration necessary to perform even simple work tasks. AR 430. 5 He opined that she would miss work more than four days per month because of her conditions. 6 AR 432. According to Dr. Posada, these limitations first began in 2004. Id. 7 In his July 25, 2017 medical source statement, Dr. Posada again diagnosed Plaintiff with 8 carpal tunnel syndrome, cervical spine stenosis, and depression.

AR 657. The July 25, 2017 9 statement also included new diagnoses of anxiety, hypertension, migraine headaches, coronary 10 artery disease, bowel incontinence, sleep apnea, insomnia, pre-diabetic, and congestive heart failure. 11 AR 657. It did not include diagnoses of sciatica, chronic back pain, asthma, or knee pain. See id. 12 The limitations he assessed in the second opinion are similarly restrictive as those in his May 8, 13 2017 statement.

Compare AR 658–60 with AR 430–32. He also added that Plaintiff has significant 14 limitations with reaching, handling, and fingering, and can perform these activities for only 30 15 minutes of an 8-hour workday. AR 658. 16 The ALJ afforded "Dr. Posada's opinions... little weight due to their lack of support and 17 inconsistency with the medical evidence." AR 902.

As to the May 8, 2017 statement, although 18 Dr. Posada indicated that Plaintiff's limitations first began in 2004, the ALJ found that he "ignore[d] 19 about a decade of work after this time" and that Dr. Posada's opinion was "inconsistent with the 20 imaging and physical examination findings in the record[.]" Id. This included findings that Plaintiff 21 "had quite minimal lumbar and thoracic findings and little in the way of lower extremity findings"; 22 Plaintiff's "gait, strength, sensory, and reflex findings were inconsistent and often good or normal"; 23 and Plaintiff's "range of motion findings were inconsistent and sometimes normal[.]" Id. 24 The ALJ similarly afforded Dr. Posada's July 25, 2017 statement little weight.

Id. The ALJ 25 explained that "the physical examination findings are not consistent with the record as a whole and 26 while there are some cervical findings, these alone are not consistent with this level of limitation, 27 particularly in light of the strength, sensory, and reflex findings[.]" AR 902–03.

For instance, the 1 "had quite conservative migraine treatment and her reports were quite inconsistent and sporadic" 2 (AR 903). The ALJ further found that Dr. Posada's opinion that Plaintiff had "constant interference 3 with concentration, the neck movement, absences, positional changes, and again, very limited 4 exertional limitations... are simply not supported, nor consistent with the objective findings." 5 AR 903.

The ALJ also gave little weight Dr. Posada's November 15, 2019 treatment note that Plaintiff was permanently disabled, as "[t]his is a finding reserved to the Commissioner and is not entitled to special significance (20 CFR 416.927(d)(3))" and "is not consistent with the actual physical examination and most of the imaging findings[.]" AR 903. A careful review of the record confirms the ALJ's finding that Dr. Posada's opinions lack sufficient support.

Although Plaintiff underwent a number of tests between 2015 and 2017, none showed any significant findings. A May 2015 x-ray of Plaintiff's lumbar spine showed "[f]ive non-ribbed lumbar vertebral bodies in normal alignment without evidence of spondylolysis or spondylolisthesis", "[n]o acute compression deformities", and "[n]o significant degenerative changes[.]" AR 353–54.

A June 2015 MRI of the lumbar spine showed normal vertebral alignment, marrow signal, vertebral height, and disc space height; no disc protrusion or extrusion; no spinal stenosis; and no neural foraminal stenosis. AR 354–55. A July 2015 nerve conduction study ("NCS") and electromyography ("EMG") were normal and were largely "consistent with a prior EMG/NCS report dated 4/2/12[.]" AR 335–36.

A November 2015 CT scan showed that Plaintiff had "[m]ultilevel degenerative disease of the cervical spine, including osteophytosis, calcification of the posterior longitudinal ligament, and disc space narrowing notably at C5–C7." AR 352. There was "[n]o subluxation or dislocation seen," prevertebral soft tissues were unremarkable, and there was "[n]o significant stenosis" in the spinal canal.

Id. November 2015 progress notes by rheumatologist Neera Narang, M.D. state that "[s]ome of the symptoms described are quite extreme including bowel/bladder accidents due to [Plaintiff] not making it to the bathroom in a timely fashion[.]" AR 386. "[H]owever, given [Plaintiff's] relatively normal exam and ability to 'get up and go' from her chair quite well[.]" Dr. Narang was "not sure with ongoing neurosurgical and podiatric consultation and [d]id not see a systemic rheumatologic explanation for her findings." Id. On December 14, 2015, Plaintiff saw neurosurgery physician Jason I. Lifshutz, M.D.

AR 389. Plaintiff reported to Dr. Lifshutz "issues related to her low back, as well as feet going on for two years", "numbness in her feet", "back pain with pain radiating down her left lower extremity", and "neck pain with numbness and tingling in her arms whenever she does activities." AR 389.

In contrast to her complaints to Dr. Narang (AR 386), Plaintiff "denie[d] any bladder and bowel difficulties" (AR 389). Dr. Lifshutz "note[d] there is very poor effort given on the motor examination" and that Plaintiff's "MRI showed no evidence of any stenosis." AR 389–90. Although he recommended cervical and thoracic spine MRIs due to Plaintiff's neck issues, Dr.

Lifshutz concluded that “[a]t this point in time I do not have a good explanation for her pain” 12 and that “no surgical intervention is required that I could see.” AR 390.

13 Dr. Narang saw Plaintiff again on January 26, 2016. AR 607–08. Dr. Narang noted that 14 Plaintiff’s “symptoms have not been correlated well with objective findings – L-spine imaging, 15 EMG/NCS, and neurosurgery evaluation have failed to uncover a clear etiology for these severe, 16 function-limiting symptoms” and that “[a]t this time, her symptoms do not fit well with a systemic 17 rheumatologic issue.” AR 607.

18 In March 2016, Plaintiff received an MRI of her cervical spine, which showed moderate 19 cervical spondylosis, but no evidence of cord compression, abnormal intramedullary cord signal, or 20 enhancement to suggest active demyelinating plaques. AR 440–41. An April 2016 MRI showed 21 “[m]inimal broad-based disc bulges at L4–5 and L5–S1 without significant central canal stenosis or 22 neuroforaminal narrowing.” AR 821.

There were “[n]o cord signal abnormalities.” AR 822. 23 Plaintiff’s March 2017 MRI of the lumbar spine was “unremarkable.” AR 717. During a 24 July 13, 2017 appointment, Plaintiff denied any headache, neck pain, generalized or focal weakness, 25 or numbness. AR 666–67. Plaintiff’s neck exhibited painless range of motion, was non-tender, and 26 had no vertebral tenderness.

AR 668. An inspection of Plaintiff’s back was normal with no 27 tenderness. *Id.* 1 opinions little weight. See *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (“When 2 confronted with conflicting medical opinions, an ALJ need not accept a treating physician’s opinion 3 that is conclusory and brief and unsupported by clinical findings.”) (citation omitted).

Plaintiff cites 4 a number of records that she contends support Dr. Posada’s opinion regarding the severity of her 5 ailments. *Pl. Br.* at 14. The court disagrees. 6 Plaintiff underwent surgery for carpal tunnel syndrome in August and November 2016. 7 AR 1821–22, 1856–57. Plaintiff points to a post-surgery May 2017 EMG study of her wrists, which 8 showed moderately-severe carpal tunnel syndrome in both wrists.

Pl. Br. at 14 (citing AR 594). 9 Plaintiff does not explain, or point to any records explaining, how these findings affect her 10 manipulative abilities, nor does she reconcile the post-surgery medical records that show no 11 abnormalities. Indeed, on May 3, 2017—the same month as her EMG study—Plaintiff’s grip 12 strength in her hands was “equal and strong.” AR 487.

During a review of symptoms in July 2017, 13 Plaintiff denied experiencing any generalized weakness or numbness. AR 666–67. 14 Plaintiff cites 2014 and 2015 records showing treatment for foot, leg, and ankle pain, and 15 noted problems with her gait and balance. *Pl. Br.* at 14 (citing AR 270, 286, 292, 294, 313, 318– 16 19, 321, 325, 372, 379, 387–93). Plaintiff also argues that she was prescribed a cane in 2015 to help 17 her walk.

Id. (citing AR 368). However, substantial evidence shows that Plaintiff exhibited a normal, intact, or steady gait on March 17, 2016; January 12, 2017; February 25, 2017; March 18, 2017; May 6, 2019; February 10, 2021; May 24, 2022; November 11, 2022; February 3, 2023; April 20, 2023; May 1, 2023; May 3, 2023; May 8, 2023; and June 17, 2023. AR 721, 730, 737, 836, 1327, 1396, 1590, 1671, 2114, 2150, 2151, 2163, 2179, 2211, 2258, 2260; see AR 2164 (“Negative 22 for back pain, gait problem and neck pain”); AR 2259 (“Negative for back pain, gait problem, neck 23 pain and neck stiffness.”).

On March 21, 2016, while being examined for headaches, Plaintiff was observed as exhibiting “no weakness, no problem with equilibrium[.]” AR 612. Plaintiff also inconsistently reported using a cane. In April 2016, Plaintiff reported using a cane for two months (AR 457), but in June 2016 and April 2017, she circled “no” in response to the question “Do you have physical disabilities? (use a cane or walker, have problems moving an arm or leg in a certain 1 prescription for a cane demonstrates a limitation of her mobility.

Plaintiff also relies on a March 2016 MRI, which showed moderate cervical spondylosis, but no evidence of cord compression or abnormal intramedullary cord signal, and an April 2016 MRI, which found mild to moderate central canal stenoses and degenerative changes at C4-C7, as well as cervical spine fusion surgery on September 25, 2017, as additional support for Dr. Posada’s opinions.

Pl. Br. at 14 (citing AR 441, 828, 830, 1762). In March 2016, Dr. Lifshutz “recommended 7 surgery of C6 corpectomy with a possible posterior fusion in a second sitting if needed[.]” AR 647. 8 On September 25, 2017, Plaintiff underwent C3-6 laminoplasty, with C7 superior laminectomy, C5- 9 7 left foraminotomy, C5-7 hardware placement and C5-7 bilateral interbody fusion.

AR 1762–65. 10 Plaintiff fails to identify evidence showing that the surgery was not successful. Plaintiff 11 does not explain how these MRIs and her surgery are not accounted for in the ALJ’s RFC finding 12 that she should not climb ladders, ropes, and scaffolds; could occasionally climb ramps and stairs; 13 should not be required to balance as defined in the SCO/DOT; and could occasionally stoop, kneel, 14 crouch, and crawl.

Moreover, Plaintiff’s surgery, in and of itself, is not indicative of a functional 15 limitation, particularly where she reported no back or neck pain or stiffness on February 3, 2023; 16 March 9, 2023; April 26, 2023; and May 3, 2023 (AR 2164, 2193, 2239, 2259) and, as noted above, 17 she was observed as having a normal gait on multiple occasions between 2019 and 2023.

18 In light of the above, the court finds there is substantial evidence supporting the ALJ’s 19 decision to afford Dr. Posada’s opinion little weight. 20 B. The ALJ’s Credibility Finding 21 Plaintiff argues the ALJ erred in finding she was not fully credible. 22 1. Legal Standard 23 In

general, credibility determinations are the province of the ALJ. “It is the ALJ’s role to 24 resolve evidentiary conflicts.

If there is more than one rational interpretation of the evidence, the 25 ALJ’s conclusion must be upheld.” *Allen v. Sec’y of Health & Hum. Servs.*, 726 F.2d 1470, 1473 26 (9th Cir. 1984) (citations omitted). An ALJ is not “required to believe every allegation of disabling 27 pain” or other nonexertional impairment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.

1989) (citing 1 testimony, the ALJ must articulate specific reasons for doing so. *Greger v. Barnhart*, 464 F.3d 968, 2 972 (9th Cir. 2006). In evaluating a claimant’s credibility, the ALJ cannot rely on general findings, 3 but “must specifically identify what testimony is credible and what testimony undermines the 4 claimant’s complaints.” *Id.* at 972 (cleaned up); see also *Thomas v. Barnhart*, 278 F.3d 947, 958 5 (9th Cir.

2002) (an ALJ must articulate reasons that are “sufficiently specific to permit the court to 6 conclude that the ALJ did not arbitrarily discredit claimant’s testimony”). The ALJ may consider 7 “ordinary techniques of credibility evaluation,” including the claimant’s reputation for truthfulness 8 and inconsistencies in testimony, and may also consider a claimant’s daily activities, and 9 “unexplained or inadequately explained failure to seek treatment or to follow a prescribed course of 10 treatment[.]” *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir.

1996). 11 The determination of whether or not to accept a claimant’s testimony regarding subjective 12 symptoms requires a two-step analysis. 20 C.F.R. § 404.1529; *Smolen*, 80 F.3d at 1281 (citations 13 omitted). First, the ALJ must determine whether or not there is a medically determinable 14 impairment that reasonably could be expected to cause the claimant’s symptoms.

20 C.F.R. 15 § 404.1529(b); *Smolen*, 80 F.3d at 1281–82. Once a claimant produces medical evidence of an 16 underlying impairment, the ALJ may not discredit the claimant’s testimony as to the severity of 17 symptoms “based solely on a lack of objective medical evidence to fully corroborate the alleged 18 severity of” the symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir.

1991) (en banc) (citation 19 omitted). Absent affirmative evidence that the claimant is malingering, the ALJ must provide 20 “specific, clear and convincing” reasons for rejecting the claimant’s testimony. *Vasquez v. Astrue*, 21 572 F.3d 586, 591 (9th Cir. 2009).

The Ninth Circuit has reaffirmed the “specific, clear and 22 convincing” standard applicable to review of an ALJ’s decision to reject a claimant’s testimony. 23 See *Burrell v. Colvin*, 775 F.3d 1133, 1136 (9th Cir. 2014). 24 2. Analysis 25 The ALJ found that Plaintiff’s “medically determinable impairments could reasonably be 26 expected to cause the alleged symptoms; however, [Plaintiff’s] statements concerning the intensity, 27 persistence and limiting effects of these symptoms are not fully supported[.]” AR 898.

Although 1 diagnostic findings that correlated with her symptoms (see, e.g., 5F/21-22; 14F/5).” Id. In addition, 2 Plaintiff “attested to quite limited activities of daily living and loss of functioning, but the medical 3 evidence is not consistent with the level of limitations alleged.” AR 900. 4 The court finds that the ALJ provided specific, clear and convincing reasons for the adverse 5 credibility finding, which is supported by substantial evidence.

As discussed above, the medical 6 records do not substantiate Plaintiff’s reports of severe impairment. See *Burch v. Barnhart*, 400 7 F.3d 676, 681 (9th Cir. 2005) (“Although lack of medical evidence cannot form the sole basis for 8 discounting pain testimony, it is a factor that the ALJ can consider in his credibility analysis.”); 9 *Carmickle v. Comm’r, Soc.*

Sec. Admin., 533 F.3d 1155, 1161 (9th Cir. 2008) (“Contradiction with 10 the medical record is a sufficient basis for rejecting the claimant’s subjective testimony.”). For 11 instance, Plaintiff was prescribed a cane in 2015 (AR 368) and testified that she has used a cane 12 every day since 2018 (AR 935).

However, she was observed exhibiting a normal, intact, or steady 13 gait on numerous occasions between 2018 and 2023. AR 1327, 1396, 1590, 1671, 2114, 2150, 14 2151, 2164, 2163, 2179, 2211, 2258, 2259, 2260. In addition, in June 2016 and April 2017, she 15 circled “no” in response to the question “Do you have physical disabilities? (use a cane or walker, 16 have problems moving an arm or leg in a certain way).” AR 495, 572.

17 In fact, medical providers themselves repeatedly noted that the alleged severity of Plaintiff’s 18 self-reported symptoms was not consistent with their findings, and that she displayed poor effort 19 during examinations.

In November 2015, Dr. Narang noted that “[s]ome of the symptoms are quite 20 extreme, including bowel/bladder accidents due to pt not making it to the bathroom in a timely 21 fashion – however, given her relatively normal exam and ability to ‘get up and go’ from her chair 22 quite well, I’m not sure there is an organic explanation for these reported symptoms.” AR 386.

In 23 December 2015, Dr. Lifshutz “note[d] there is very poor effort given on the motor examination[.]” 24 AR 389. In January 2016, Dr. Narang assessed Plaintiff as “4+/5 strength on the RUE (?limited by 25 effort)... otherwise 5/5 strength.” AR 605.

In March 2016, Cheryl Pan, M.D. stated that “[p]atient 26 is very pleasant, but not a reliable historian.” AR 610. A July 17, 2017 medical source statement 27 1 from an unidentified physician indicated that Plaintiff is a malingerer.³ AR 652.

In July 2018, while 2 being evaluated for right leg pain, Plaintiff was observed as exhibiting “poor effort” during her 3 physical examination. AR 359. 4 Plaintiff also inconsistently reported symptoms. For instance, in November 2015, she 5 reported to Dr. Narang having “bowel/bladder

accidents” (AR 386) but “denie[d] any bladder and 6 bowel difficulties” the following month (AR 389).

Plaintiff also “denie[d] incontinence” in March 7 2016. AR 611. 8 In light of the above, the court finds the ALJ did not err in discounting Plaintiff’s subjective 9 testimony. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002) (Claimant’s “efforts to impede 10 accurate testing of her limitations support[ed] the ALJ’s determinations as to her lack of 11 credibility.”); *Gracy B. v. Kijakazi*, No. 20-CV-01241-SP, 2022 WL 971336, at *6 (C.D.

Cal. 12 Mar. 30, 2022) (“Even without an affirmative finding of malingering, an ALJ may rely on a 13 claimant’s poor effort as a reason to discount his or her symptom testimony.”) (citing *Collins v. 14 Astrue*, No. CV07-08082OP, 2009 WL 1202891, at *5–6 (C.D. Cal. Apr. 27, 2009)). 15 C. The ALJ’s Hypothetical Questions 16 Plaintiff argues the ALJ failed to pose a complete hypothetical question to the VE that 17 included the limitations identified in Dr. Posada’s medical source statements and Plaintiff’s 18 testimony.

Pl. Br. at 12. As the court finds the ALJ did not err in affording Dr. Posada’s opinions 19 little weight or discounting Plaintiff’s testimony, the court finds that the ALJ’s did not err in failing 20 to consider this evidence in posing hypotheticals to the VE. 21 V. CONCLUSION 22 For the reasons stated above, the court denies Plaintiff’s motion and grants the 23 Commissioner’s cross-motion.

The clerk of court shall enter judgment in favor of the Commissioner 24 and close the file in this matter. 25 // 26 // 27 1 IT IS SO ORDERED. 2 Dated: December 30, 2025 3 Qe onna M. Ryu 4 Chief Magistrate Judge 5 6 7 8 9 10 11 12 13 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28