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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARIA HERNANDEZ,)	Case No. CV 05-4043 PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

I. INTRODUCTION

Before the Court is Plaintiff's appeal of a decision by Defendant Social Security Administration ("the Agency"), denying her applications for Disability Insurance benefits ("DIB") and Supplemental Security Income benefits ("SSI"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred in 1) failing to properly consider the opinions of her treating physicians; 2) determining that her testimony was not credible; and 3) failing to determine whether

1 she could "sustain work activity."¹ (Joint Stip. at 8-17, 24-28, 36-
2 38.) For the reasons explained below, the Agency's decision is
3 affirmed.

4 II. BACKGROUND

5 A. The Proceedings Before the Agency

6 On November 24, 1998, Plaintiff applied for SSI and DIB, claiming
7 that she had been disabled since September 30, 1998, due to low back
8 pain. (Administrative Record ("AR") 62, 88, 252.) After the Agency
9 denied the applications initially and on reconsideration, Plaintiff
10 appeared with counsel at a hearing before an Administrative Law Judge
11 ("ALJ") on May 17, 2000, and testified. (AR 62, 66, 319-42.) On June
12 20, 2000, the ALJ issued a decision denying her applications. (AR 22-
13 28.) Following the Appeals Council's denial of her request for
14 review, Plaintiff filed an action in this court. The parties
15 subsequently stipulated to a remand to the Agency for further
16 consideration of Plaintiff's credibility and the treating doctor's
17 opinion. (AR 356-64.)

18 On remand, the ALJ held another administrative hearing, at which
19 Plaintiff again appeared with counsel and testified. (AR 495-508.)
20 On July 25, 2002, the ALJ issued a decision, again denying Plaintiff's
21 applications. (AR 267-72.) Plaintiff appealed to the Appeals
22 Council, which remanded the case to a different ALJ with instructions
23 to develop the record with respect to Plaintiff's treating doctor's
24 opinion, evaluate Plaintiff's subjective complaints, and further
25 consider Plaintiff's residual functional capacity. (AR 291-93.)

26
27 ¹ The Court has presented Plaintiff's claims in the order that
28 it will address them herein. It is not the same order that Plaintiff
raised them in the Joint Stipulation.

1 Thereafter, a third administrative hearing was held before a
2 different ALJ. (AR 511-37). This time, the ALJ found that Plaintiff
3 was disabled beginning January 1, 2004, but not before then. (AR 297-
4 313.) Because the ALJ determined that Plaintiff had acquired
5 sufficient quarters of coverage to remain insured through only
6 December 31, 1998, he found that she was not entitled to receive DIB,
7 but that she was eligible to receive SSI beginning January 1, 2004.²
8 (AR 298-99.) Thereafter, Plaintiff filed the instant action,
9 challenging the ALJ's finding that she was not disabled before January
10 1, 2004.

11 B. Summary of the Medical Evidence

12 Plaintiff developed a hernia in 1985, and underwent a ventral
13 herniorrhaphy in December 1996, to repair it. (AR 206-07.) On
14 September 22, 1998, Plaintiff complained of a sudden onset of
15 abdominal pain and was treated at the emergency room at the Methodist
16 Hospital of Southern California, where she was diagnosed with
17 incarcerated hernia versus strangulated bowel. (AR 190-92.) Against
18

19 ² Plaintiff contends that the ALJ erred when he found that her
20 date last insured was December 1998 and, as proof, she contends "it
21 has been stated throughout the case that she was last insured 12/99."
22 (Joint Stip. at 3.) Accordingly, Plaintiff argues that she is
23 eligible for DIB if she can establish she was disabled on or before
24 December 31, 1999. (Joint Stip. at 3.) The Court rejects this
25 argument. Although the first ALJ stated that Plaintiff last met the
26 insured status requirements on December 31, 1999, (AR 23), which
27 finding may have been based on an unsupported notation by a reviewing
28 state agency doctor, (AR 69), that date was not based on any evidence
appearing in the record, nor was it mentioned again. After the issue
of Plaintiff's date last insured was raised at the third
administrative hearing, (AR 514-16), the ALJ determined that the
correct date was December 31, 1998. (AR 299.) This finding is
supported by substantial evidence in the record in the form of
earnings calculations, (AR 433-34, 439, 443-44), and Plaintiff
provides no basis for disturbing it.

1 medical advice, Plaintiff went home. (AR 188.) On September 30,
2 1998, she underwent a hernioplasty and lipectomy in Sonora, Mexico.
3 (AR 161.) On December 12, 1998, Dr. Gustavo Angulo Sanchez in Sonora
4 reported that she "presents spondylolisthesis of the L4, L5 stadium 1"
5 and opined that she was, therefore, "incapacitated for an indefinite
6 period of time, for the purposes of performing physical activities
7 such as lifting, pushing, or abdominal flexion." (AR 164.)

8 The following month, on January 25, 1999, Dr. Gabriel Fabella, a
9 consultative physician, examined Plaintiff and, despite noting mild
10 limitations in her back, determined that she could lift and carry
11 twenty pounds occasionally and ten pounds frequently, and could stand
12 and walk for about six hours in an eight-hour workday. (AR 145-49.)
13 On March 1, 1999, state agency reviewing physician Dr. Wallace
14 Campbell endorsed these limitations, and added that Plaintiff could
15 sit for six hours in an eight-hour workday and could frequently climb,
16 balance, kneel, crouch, and crawl. (AR 150-57.)

17 On March 29, 1999, Plaintiff saw Dr. Gary Moscarello for a
18 "second opinion." (AR 233.) He noted her complaints of pain in her
19 lower back and right thigh, but also observed that she "walks around
20 the room [and sat down] . . . readily." (AR 233.) Dr. Moscarello
21 found that x-rays showed spondylolisthesis at L5, L6, but opined that
22 "she is not having symptoms . . . that would require surgical
23 intervention or that surgical intervention would help," and stated
24 that she should lose weight and exercise. (AR 234.) Dr. Moscarello
25 also noted that test results indicated that she had carpal tunnel
26 syndrome in her right hand. (AR 234.)

27 On October 13, 1999, Plaintiff was involved in a car accident and
28 suffered a contusion to her right thigh and an abrasion to her left

1 leg. (AR 181.) She complained of lower back pain. X-rays of her
2 lumbosacral spine showed a transitional lumbar vertebrae and "marked
3 degenerative facet joint changes," but did not show spondylolisthesis.
4 (AR 181, 186.)

5 On October 18, 1999, Plaintiff was evaluated by Dr. Stephen
6 Roberts in connection with her accident. (AR 581-89.) Dr. Roberts
7 noted multiple areas of spasm in Plaintiff's cervicothoracic and
8 lumbosacral spine, and hematomas in her right and left thighs. (AR
9 584.) In follow-up visits between November 1999 and February 2000,
10 Plaintiff complained of pain in her neck, trapezius, low back, and
11 knee. Dr. Roberts noted diminished range of motion of the cervical
12 and lumbosacral spine and paracervicothoracic and paralumbar spasm.
13 (AR 587-88.) Plaintiff was referred for physical therapy, which she
14 underwent between November 1999 and February 2000. (AR 167-80, 587,
15 588.) Her prognosis was said to be "fair." (AR 588.)

16 Plaintiff was also referred to orthopedic surgeon Frank
17 Sorrentino. (AR 172.) On November 29, 1999, Dr. Sorrentino noted her
18 complaints of cervical, dorsal, low back, left shoulder, and right
19 thigh pain, and tingling and numbness of three fingers of her right
20 hand. (AR 225.) He observed that she walked with a limp. (AR 226.)
21 Plaintiff had a spasm in her trapezius, pain in her left shoulder, and
22 a positive left straight leg raising sign. (AR 227.) Dr. Sorrentino
23 also noted positive right Tinel's and Phalen's signs for carpal tunnel
24 syndrome. (AR 227.) He diagnosed cervical, dorsal, and lumbosacral
25 sprains, left rotator cuff tendinitis, a bulging disc at L5-S1, and a
26 hematoma on the right thigh. (AR 228.) He recommended an MRI of the
27 low back. (AR 228.) He concluded that Plaintiff "will be a candidate
28 for Social Security Disability as I do not feel she can continue on in

1 her employment cleaning houses. Even a sedentary job will be
2 difficult for this patient if she can be so trained." (AR 228.)

3 On December 27, 1999, Plaintiff visited Dr. Sorrentino again, at
4 which time he noted that an MRI of Plaintiff's lower back indicated
5 mild disc dissection at L3-L4, but did not mention the
6 spondylolisthesis diagnosed by Dr. Moscarello. (AR 230.) Dr.
7 Sorrentino opined that Plaintiff "has low back pain with any bending
8 or lifting, prolonged standing. She cannot squat or kneel. She
9 cannot bend or lift." (AR 230.) He recommended that she lose at
10 least 20-25 pounds, continue with physical therapy, and have a custom
11 orthopedic corset fitted. (AR 230.) He concluded that she would need
12 to be trained in "light work as she will not be able to tolerate
13 occupations requiring prolonged standing for more than one hour,
14 sitting for more than [two] hours at a time. She will most likely be
15 retrained into a secretarial type of work." (AR 230.)

16 On February 28, 2000, Plaintiff returned to Dr. Sorrentino. He
17 noted that Plaintiff had not obtained an orthopedic corset because she
18 could not afford one. He reported that Plaintiff continued to
19 complain of pain in her neck, left shoulder, back, and right thigh,
20 though she told him that the pain in her back had improved with
21 therapy and medications. (AR 549.) After an injection in her left
22 shoulder, Plaintiff was given refills of Tylenol with codeine,
23 released from physical therapy, and advised to "maintain" with
24 Tylenol, home remedies, and exercise. (AR 549, 550.) Dr. Sorrentino
25 opined that her prognosis "for response to conservative measures as
26 concerns the low back is poor due to the underlying spondylolisthesis
27 of L5 on S1," which was exacerbated by the trauma of the car accident.
28 (AR 550.)

1 The records show that Plaintiff was not seen again for orthopedic
2 treatment until December 14, 2000, when she returned to Dr.
3 Moscarello. On that occasion, Dr. Moscarello noted that her back has
4 been "substantially worse" since the October 1999 accident and
5 repeated his diagnosis of spondylolisthesis. (AR 560.) He opined
6 that surgery would be unlikely to make any "dramatic change" in her
7 condition, given her body weight, and prescribed Tylenol No. 3 and
8 Neurontin. (AR 560.) On April 9, 2001, Dr. Moscarello changed
9 Plaintiff's prescription to Celebrex after she complained that Tylenol
10 No. 3 caused bleeding. (AR 557.)

11 On May 14, 2001, Plaintiff reported to Dr. Moscarello that her
12 left leg had not improved and that, after walking for three hours, her
13 feet grew numb. (AR 555.) Dr. Moscarello opined that Plaintiff was
14 disabled for six months--through November 14, 2001--due to low back
15 pain and spondylolisthesis. (AR 556.) Though it looks as though
16 appointments were scheduled in June and October 2001, Plaintiff did
17 not return to Dr. Moscarello until January 2002, at which time she
18 complained only of right hand pain. (AR 552, 553-54.) On March 13,
19 2002, however, Plaintiff complained to Dr. Moscarello of severe back
20 pain. (AR 551.)

21 On March 18, 2002, Plaintiff returned to Dr. Sorrentino,
22 complaining of low back pain, numbness in her big toes, and a
23 headache. (AR 564.) Though, apparently, he did not examine her
24 during that visit, Dr. Sorrentino opined that Plaintiff "cannot bend,
25 cannot lift, cannot vacuum. She cannot stand for more than 4-5
26 minutes at a time. She utilizes a cane in the right hand as she has a
27 tendency for the leg to buckle," and he noted that her complaints
28 described right carpal tunnel syndrome. (AR 564.) He concluded that

1 Plaintiff "certainly cannot do her previous occupation and should be
2 retrained into lighter work, more of a sedentary occupation where she
3 would be allowed to sit periodically as needed for increased pain,"
4 and noted that her "complaints and symptoms have not changed since her
5 initial examination." (AR 564.)

6 On September 26, 2002, Plaintiff was seen at Los Angeles County-
7 USC Medical Center ("LAC-USC") with complaints of chronic back pain
8 over the past four years that had worsened in the previous three days.
9 (AR 812.) The attending nurse practitioner noted lumbosacral
10 tenderness but no joint swelling, and observed that Plaintiff walked
11 with a steady gait. (AR 812.) On November 8, 2002, Plaintiff was
12 diagnosed at LAC-USC with new onset diabetes mellitus, hypothyroidism,
13 arthralgia, and hyperlipidemia. (AR 810.) She was prescribed
14 Synthroid and Glyburide and referred to a nutritionist. (AR 810.) On
15 January 28, 2003, Plaintiff returned to LAC-USC with complaints of
16 foot pain, chest pain, and joint pain. (AR 806.) She was diagnosed
17 with chest pain, possibly due to angina, diabetes mellitus,
18 hypothyroidism, mild hyperlipidemia, and mild hypertension. (AR 806.)
19 Plaintiff was given various prescriptions and referred for an exercise
20 stress test. (AR 807.)

21 In July 2003, Plaintiff underwent surgery at Methodist Hospital
22 for a bowel obstruction and incarcerated ileum, after presenting to
23 the emergency room with lower abdominal pain, and no bowel movement
24 and vomiting for several days. (AR 698.) She was diagnosed with
25 noninsulin dependent diabetes mellitus, hypothyroidism, hyper-
26 cholesterolemia, and morbid obesity and discharged in a stable
27 condition. (AR 698, 699.)

28

1 Plaintiff underwent surgery again in February 2004 after
2 experiencing severe pain in her upper abdomen for 24 hours. (AR 614.)
3 She was hospitalized in March 2004 for ulcerative colitis and internal
4 hemorrhoids after suffering from rectal bleeding. (AR 605-07, 610-
5 11.) In March 2004, Dr. Jason Boutros opined that Plaintiff was
6 temporarily disabled from February 8, 2004, through December 1, 2004.
7 (AR 771.)

8 On October 26, 2004, though he had apparently not seen Plaintiff
9 since March 2002, Dr. Sorrentino completed a form report in which he
10 diagnosed her with degenerative disc disease of the cervical spine,
11 rotator cuff tendinitis, spondylolisthesis, right carpal tunnel
12 syndrome, and left ankle arthritis. (AR 826-30.) He opined that she
13 could stand for no longer than an hour, sit for no longer than five
14 hours, and walk for no longer than two hours in an eight-hour workday;
15 never bend, squat, kneel, crawl, climb, or reach above shoulder level;
16 and never lift or carry more than five pounds. (AR 828, 829.)

17 C. The ALJ's 2005 Decision

18 The ALJ determined that Plaintiff was impaired due to a history
19 of ventral hernia, new onset diabetes mellitus (in November 2002),
20 hypothyroidism, spondylolisthesis of the lumbosacral spine,
21 degenerative changes of the lumbosacral spine, history of gall bladder
22 surgery (in February 2004), and obesity, which were severe when
23 considered in combination.³ (AR 301.) The ALJ found that the
24

25 ³ In making this determination, the ALJ found that there was
26 insufficient evidence to establish that her other claimed ailments--
27 small bowel obstruction; carpal tunnel syndrome; neck, shoulder, and
28 ankle pain; leg abrasion; blurry vision and vertigo; headaches; and
cardiac condition--were severe impairments that lasted for at least
twelve consecutive months. (AR 300-301.) Plaintiff has not

1 impairments did not meet or equal a Listed impairment, whether
2 considered alone or in combination. (AR 302.)

3 After noting the varying residual functional capacity opinions in
4 the record and discussing Plaintiff's medical history in some detail,
5 the ALJ concluded that she retained the functional capacity to do
6 light work up until January 1, 2004, which, under Medical-Vocational
7 Rules 202.11 and 202.17, directed a finding that she was not
8 disabled.⁴ (AR 306-08, 312-13.) The ALJ determined, however, that,
9 after January 1, 2004, Plaintiff was only able to perform sedentary
10 work, which meant that she was disabled under Medical-Vocational Rule
11 201.09. (AR 312-13.).

12 In determining that Plaintiff could perform light work for the
13 period up to January 1, 2004, the ALJ relied on the opinions of
14 reviewing physician Campbell and examining physician Fabella. He
15 rejected Dr. Sanchez's view that Plaintiff was "incapacitated" as a
16 result of her spondylolisthesis and Dr. Sorrentino's opinion that she
17 suffered from greater functional limitations. (AR 307-08.) The ALJ
18 acknowledged that "Dr. Sorrentino's 1999 opinions may well describe
19 [Plaintiff]'s condition shortly after her motor vehicle accident," but
20 he found that "the evidence fails to establish that symptoms related
21 to her October 1999 injuries persisted for twelve consecutive months."
22 (AR 307, 308.) The ALJ also noted Dr. Moscarello's May 2001 opinion

23 _____
24 challenged this determination.

25 ⁴ The ALJ determined that, before January 2004, Plaintiff "could
26 lift and carry twenty pounds occasionally and ten pounds frequently,
27 stand and walk for about six out of eight hours, and also sit for six
28 hours in an eight-hour workday; she could frequently climb, balance,
kneel, crouch, and crawl, and she could occasionally crouch." (AR
311.)

1 that Plaintiff was disabled for six months, but found that it did not
2 establish disability for Social Security purposes because the period
3 of disability was too short. (AR 308.) The ALJ concluded that there
4 was "no evidence that [Plaintiff]'s symptoms changed significantly
5 after the date of the consultative evaluation [in January 1999] and
6 before January 2004[,]" but that internal problems, gall bladder
7 surgery, and a diagnosis of colitis limited her to sedentary work
8 after January 2004. (AR 309.)

9 III. ANALYSIS

10 A. The Treating Physicians' Opinions

11 Plaintiff contends that the ALJ did not properly consider the
12 opinions of treating doctors Gary Moscarello, Frank Sorrentino, and
13 Stephen Roberts. (Joint Stip. at 24-28, 35-36.) In particular, she
14 contends that the ALJ improperly rejected: 1) Dr. Moscarello's March
15 19, 1999 report; 2) Dr. Sorrentino's November 29, 1999 examination
16 findings and February 28, 2000 report; and 3) Dr. Roberts' records for
17 the period October 1999 to February 2000. (Joint Stip. at 24-27.)
18 For the following reasons, the Court disagrees.

19 It is well established that an ALJ is required to discuss a
20 treating doctor's opinion and that, even if it is contradicted by
21 another doctor's opinion, he may only reject it for specific and
22 legitimate reasons that are supported by substantial evidence. See,
23 e.g., *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007). On the other
24 hand, where the ALJ accepts a treating doctor's findings, he is not
25 required to provide such reasons. *Meanel v. Apfel*, 172 F.3d 1111,
26 1113 (9th Cir. 1999).

27 The ALJ accepted the functional limitations assessed by examining
28 doctor Fabella and reviewing doctor Campbell as the baseline for what

1 Plaintiff could do before her car accident in October 1999. (AR 302-
2 03, 308, 309.) Dr. Fabella's opinion, which was based on his
3 independent examination findings, constituted substantial evidence to
4 support the ALJ's residual functional capacity determination. *Andrews*
5 *v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (holding that, where
6 the opinion of a nontreating source is based on independent clinical
7 findings that differ from those of the treating physician, that
8 opinion constitutes substantial evidence).

9 As to the ALJ's analysis of Dr. Moscarello's March 1999 opinion,
10 the Court finds that it was adequate. First, the ALJ evidently
11 accepted Dr. Moscarello's diagnosis of spondylolisthesis because he
12 found this to be one of her severe impairments, even while noting that
13 other evidence in the record, such as the MRI ordered by Dr.
14 Sorrentino, conflicted with this diagnosis. (AR 299, 303-04.)
15 Additionally, as the ALJ reported, Dr. Moscarello noted Plaintiff's
16 complaints of back and thigh pain, but also stated that she walked and
17 sat down without discomfort and that she could walk on her heels and
18 toes. (AR 233.) Dr. Moscarello recommended weight loss and exercise
19 and ruled out surgery. (AR 234.) Nothing in Dr. Moscarello's March
20 1999 opinion established any greater functional limitations than those
21 found by the ALJ in his decision and, therefore, Plaintiff has failed
22 to show why the ALJ's treatment of the opinion requires remand.

23 As for Dr. Sorrentino's opinion, the ALJ gave several reasons why
24 he did not adopt the functional limitations found by Dr. Sorrentino in
25 1999, i.e., that Plaintiff would find even a sedentary job difficult,
26 and that she could stand for no longer than one hour and sit for no
27 longer than two hours. (AR 228.) First, the ALJ pointed out that
28 Plaintiff told Dr. Moscarello in May 2001 that her feet grew numb

1 after walking for three hours, which suggested that her condition had
2 improved as she recovered from her October 1999 accident. (AR 307.)
3 This finding is supported by the record. (AR 555.)

4 More generally, as mentioned above, the ALJ found that, though
5 Dr. Sorrentino's 1999 reports might have accurately described
6 Plaintiff's condition at that time, there was no evidence to establish
7 that any limitations she was experiencing in November and December
8 1999, just a month or two after the accident, persisted at the same
9 level for any period of at least 12 consecutive months thereafter.
10 (AR 307.) The ALJ noted that, "[f]or a time after the accident,
11 [Plaintiff] received aggressive and intensive treatment" with Dr.
12 Roberts and Dr. Sorrentino through February 2000. (AR 303, 304.) The
13 ALJ contrasted this period of intensive treatment with a lack of any
14 orthopedic treatment between February and December 2000, and with
15 Plaintiff's lack of any treatment with Dr. Sorrentino between February
16 2000 and March 2002. (AR 304, 307.) This was a legitimate basis for
17 declining to adopt Dr. Sorrentino's functional limitations for the
18 entire period at issue. See, e.g., *Carmickle v. Comm'r, Soc. Sec.*
19 *Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008) (affirming ALJ's rejection
20 of treating doctor's statement that claimant could not tolerate even
21 sedentary work where record showed his condition subsequently
22 improved).

23 Moreover, the ALJ noted Dr. Sorrentino's statement in October
24 2004 that the only treatment he had provided to Plaintiff was
25 "physiotherapy originally and then Ibuprofen," which conservative
26 treatment was inconsistent with the extreme limitations that Dr.

1 Sorrentino assessed.⁵ (AR 308, 827.) In sum, to the extent that the
2 ALJ rejected Dr. Sorrentino's view that Plaintiff was unable to do
3 light work for any consecutive 12-month period after November 1999,
4 the ALJ's reasons were specific and legitimate and supported by
5 substantial evidence in the record.

6 Finally, with respect to Dr. Roberts, the ALJ noted his treatment
7 findings between October 1999 and February 2000. (AR 303.) Though
8 the ALJ did not specifically accept or reject these findings, but his
9 failure to do so was not error. Dr. Roberts did not express any
10 opinion about Plaintiff's functional limitations in those notes.
11 Furthermore, as previously discussed, the ALJ accepted that
12 Plaintiff's condition in the months following her accident was poor,
13 but found that it had improved sufficiently by February 2000 that she
14 was released from physical therapy and did not need orthopedic
15 treatment again until December 2000, at which time Dr. Moscarello
16 again ruled out surgery and prescribed Tylenol.⁶ (AR 303-04.)

17 Although another factfinder might have drawn a different
18 conclusion from Plaintiff's medical records, the ALJ's interpretation
19 was not unreasonable. Under the "highly deferential" standard of
20 review applied here, the ALJ's decision must be upheld if it is
21

22 ⁵ Additionally, the ALJ rejected Dr. Sorrentino's March 2002
23 functional capacity assessment because Dr. Sorrentino did not examine
24 Plaintiff, but "merely repeat[ed] her subjective complaints[,] and
25 rejected his 2004 opinion in part because it was inconsistent with
26 that of other examiners and also unsupported. (AR 308.) Plaintiff
27 does not specifically challenge those findings here.

28 ⁶ Similarly, the ALJ was not required to specifically accept or
reject other treatment notes from Methodist Hospital and Woodfield
Medical Group that did not include any diagnoses or functional
limitations.

1 supported by substantial evidence and is based on a correct
2 application of the law. *Valentine v. Comm'r, Soc. Sec. Admin.*, 574
3 F.3d 685, 690 (9th Cir. 2009). Here, the ALJ set out a "detailed and
4 thorough summary of the facts and conflicting medical evidence,
5 stat[ed] his interpretation thereof, and ma[de] findings[,]" which
6 supported his partial rejection of the treating doctors' opinions.
7 *Orn*, 495 F.3d at 632. Thus, there was no error.

8 B. Plaintiff's Credibility

9 Plaintiff contends that the ALJ's finding that her "allegations
10 for the period before January 2004 are not fully credible," (AR 311),
11 was erroneous and not supported by substantial evidence in the record.
12 (Joint Stip. at 14-17.) For the following reasons, this claim is
13 rejected.

14 ALJ's are tasked with judging the credibility of witnesses.
15 Where, as here, a claimant has produced objective medical evidence of
16 an impairment which could reasonably be expected to produce the
17 symptoms alleged and there is no evidence of malingering, the ALJ can
18 only reject the claimant's testimony for specific, clear, and
19 convincing reasons. *Smolen v. Chater*, 80 F.3d 1273, 1283-84 (9th Cir.
20 1996). In making a credibility determination, the ALJ may take into
21 account ordinary credibility evaluation techniques as well as a
22 claimant's inadequately explained failure to seek or follow a course
23 of treatment. *Id.* at 1284. If the ALJ's credibility finding is
24 supported by substantial evidence in the record, the Court may not
25 engage in second-guessing. *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th
26 Cir. 2002).

27 The ALJ gave several reasons for finding that Plaintiff's pre-
28 2004 complaints were not fully credible. First, the ALJ noted that

1 Plaintiff had denied experiencing previous back problems to Dr.
2 Sorrentino at her first meeting with him after the October 1999 car
3 accident, a statement that was plainly inconsistent with several other
4 records, including a lower-back pain complaint in January 1997, a
5 doctor's diagnosis of spondylolisthesis in 1998, Plaintiff's statement
6 that she had "18 months of pain in her lower back" in March 1999, and
7 Dr. Moscarello's report that Plaintiff complained of back pain prior
8 to the accident. (AR 309.) The ALJ found that Plaintiff "apparently
9 mischaracterized her history of back pain in order to accentuate
10 problems associated with the motor vehicle accident[,] " which reduced
11 her general credibility. (AR 309.) This was a proper basis for
12 questioning Plaintiff's credibility, *Smolen*, 80 F.3d at 1284, and is
13 supported by substantial evidence in the record. (AR 159, 226, 541.)

14 Second, the ALJ found that Plaintiff's treatment history
15 undermined her allegations of disability. (AR 310.) He noted
16 significant gaps in her treatment history. For example, despite Dr.
17 Sorrentino's findings that Plaintiff was severely limited in her
18 functioning, he did not see her between February 2000 and March 2002,
19 and March 2002 and October 2004. (AR 304, 305, 550, 564, 826.) Nor
20 did Plaintiff receive treatment for back or leg pain at any time
21 between May 2001 and March 2002, during at least part of which time
22 she was deemed disabled by Dr. Moscarello. (AR 304, 552-55.)

23 Though the ALJ acknowledged that Plaintiff did not have medical
24 insurance during the relevant time period, he also noted that she was
25 able to access health care at county facilities and Methodist
26 Hospital. (AR 310, 800-17.) The record shows, for example, that
27 Plaintiff was seen for gynecological treatment at San Gabriel Valley
28 County Health Centers in September 2000. (AR 820.) Thus, the ALJ was

1 permitted to rely on the fact that Plaintiff failed to seek treatment
2 for her alleged back and leg pain as a basis for questioning her
3 credibility. See *Orn*, 495 F.3d at 638 (“[A]n unexplained, or
4 inadequately explained, failure to seek treatment may be the basis for
5 an adverse credibility finding unless one of a number of good reasons
6 for not doing so applies.”) (quotation omitted).

7 Additionally, the ALJ found that the treatment Plaintiff received
8 was not commensurate with her alleged level of pain. The ALJ noted
9 that Dr. Sorrentino provided only physical therapy and Ibuprofen and
10 LAC-USC provided only routine treatment until January 2004, findings
11 which are also supported in the record. (AR 310, 807, 827.)
12 Moreover, the ALJ noted that Plaintiff missed a scheduled appointment
13 in July 2003, failed to pick up prescriptions in July 2003 and January
14 2004, and failed to follow up with referrals for a nutritionist, an
15 eye specialist, and a stress test. (AR 310.) Again, the record
16 supports these findings and they are all legitimate reasons to
17 question Plaintiff’s testimony. (AR 800, 802.) See *Orn*, 495 F.3d at
18 638 (“Our case law is clear that if a claimant complains about
19 disabling pain but fails to seek treatment, or fails to follow
20 prescribed treatment, for the pain, an ALJ may use such failure as a
21 basis for finding the complaint unjustified or exaggerated.”).⁷
22 Because the ALJ provided specific, clear, and convincing reasons for
23 rejecting Plaintiff’s pain testimony, all of which are supported by
24 substantial evidence in the record, this claim does not warrant
25 remand.

26
27 ⁷ The ALJ also discounted Plaintiff’s allegations in so far as
28 they concerned her obesity. (AR 310.) Plaintiff has not challenged
that aspect of his decision here.

1 C. Ability to Sustain Employment

2 Plaintiff contends that the ALJ erred in failing to adequately
3 determine whether she could work on a sustained basis prior to her
4 date last insured. (Joint Stip. at 36-38.) She contends that the ALJ
5 was required by Social Security Ruling ("SSR") 96-8p to evaluate
6 whether she could do work activities on an "eight-hour a day for five-
7 days a week basis" in light of her functional capacity and the
8 evidence in the record. (Joint Stip. at 37.) This claim is also
9 rejected.

10 SSR 96-8p provides that the ALJ "must include a narrative
11 discussion describing how the evidence supports each conclusion . . .
12 must discuss the individual's ability to perform sustained work
13 activities in an ordinary work setting on a regular and continuing
14 basis . . . and describe the maximum amount of each work-related
15 activity the individual can perform based on the evidence available in
16 the case record." In light of the ALJ's thorough and detailed
17 discussion of the medical evidence, set forth above, the Court
18 concludes that he met the requirements of SSR 96-8p in this case.

19 As discussed above, the ALJ based his residual functional
20 capacity assessment of Plaintiff's condition before 2004 on the
21 opinions of Dr. Fabella and Dr. Campbell. (AR 308.) Both Dr. Fabella
22 and Dr. Campbell found that Plaintiff could stand and walk six hours
23 in an eight-hour workday with normal breaks. (AR 148, 151.) And, as
24 just discussed, the ALJ's rejection of the functional limitations set
25 forth by Dr. Sorrentino was based on specific and legitimate reasons,
26 which were supported by substantial evidence in the record. Because
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1 Plaintiff has not shown that the ALJ failed to heed the directives of
2 SSR 96-8p, this claim does not require remand or reversal.

3 For all of the above reasons, the Agency's decision is affirmed.

4 IT IS SO ORDERED.

5 DATED: November 13, 2009.

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PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE

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