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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SAJEDA BARI,)	NO. CV 08-5753-MAN
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	AND ORDER
)	
MICHAEL J. ASTRUE,)	
Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	
_____)	

Plaintiff filed a Complaint on September 12, 2008, seeking review of the denial by the Social Security Commissioner ("Commissioner") of plaintiff's application for supplemental security income ("SSI"). On November 12, 2008, the parties consented to proceed before the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). The parties filed a Joint Stipulation on May 28, 2009, in which: plaintiff seeks an order reversing the Commissioner's decision and awarding benefits or, alternatively, remanding the case to the Commissioner for a new administrative hearing; and defendant asks that the Commissioner's decision be affirmed. The Court has taken the parties' Joint Stipulation under submission without oral argument.

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SUMMARY OF ADMINISTRATIVE PROCEEDINGS

Plaintiff filed her application for SSI on February 7, 2007, alleging an inability to work since March 1, 2003, due to a migrating intrauterine device ("IUD"). (Administrative Record ("A.R.") 57, 70.) Plaintiff has no past relevant work experience. (A.R. 247.) The Commissioner denied plaintiff's claim for benefits initially (A.R. 45-48) and upon reconsideration (A.R. 36-41). On April 23, 2008, plaintiff, who was represented by counsel, appeared and testified at a hearing before Administrative Law Judge Keith Dietterle ("ALJ"). (A.R. 242-60.) On May 21, 2008, the ALJ denied plaintiff's claims (A.R. 11-19), and the Appeals Council subsequently denied plaintiff's request for review of the ALJ's decision (A.R. 3-5).

SUMMARY OF ADMINISTRATIVE DECISION

The ALJ found that plaintiff has not engaged in substantial gainful activity since the application date of February 1, 2007. (A.R. 13.) The ALJ determined that plaintiff's history of migrating IUD constitutes a severe impairment. (*Id.*) However, the ALJ found that plaintiff does not have an impairment of combination of impairments that meets or medically equals one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. (*Id.*)

The ALJ further found that plaintiff has the residual functional capacity to perform sedentary work. (A.R. 13.) Plaintiff has no past relevant work. (A.R. 18.) The ALJ determined that, considering plaintiff's age, education, work experience, and residual functional

1 capacity, jobs exist in significant numbers in the national economy that
2 plaintiff can perform. (*Id.*) Accordingly, the ALJ concluded that
3 plaintiff has not been under a disability, as defined in the Social
4 Security Act, since February 1, 2007, the date the application was
5 filed. (A.R. 19.)

6
7 **STANDARD OF REVIEW**
8

9 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's
10 decision to determine whether it is free from legal error and supported
11 by substantial evidence in the record as a whole. Orn v. Astrue, 495
12 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is "such relevant
13 evidence as a reasonable mind might accept as adequate to support a
14 conclusion." *Id.* (citation omitted). The "evidence must be more than
15 a mere scintilla but not necessarily a preponderance." Connett v.
16 Barnhart, 340 F.3d 871, 873 (9th Cir. 2003). "While inferences from the
17 record can constitute substantial evidence, only those 'reasonably drawn
18 from the record' will suffice." Widmark v. Barnhart, 454 F.3d 1063,
19 1066 (9th Cir. 2006)(citation omitted).

20
21 Although this Court cannot substitute its discretion for that of
22 the Commissioner, the Court nonetheless must review the record as a
23 whole, "weighing both the evidence that supports and the evidence that
24 detracts from the [Commissioner's] conclusion." Desrosiers v. Sec'y of
25 Health and Human Servs., 846 F.2d 573, 576 (9th Cir. 1988); see also
26 Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). "The ALJ is
27 responsible for determining credibility, resolving conflicts in medical
28 testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d

1 1035, 1039 (9th Cir. 1995). "Where the evidence as a whole can support
2 either a grant or a denial, [a federal court] may not substitute [its]
3 judgment for the ALJ's." Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d
4 1219, 1222 (9th Cir. 2009)(citation and internal punctuation omitted).

5
6 The Court will uphold the Commissioner's decision when the evidence
7 is susceptible to more than one rational interpretation. Tommasetti v.
8 Astrue, 553 F.3d 1035, 1038 (9th Cir. 2008); Burch v. Barnhart, 400 F.3d
9 676, 679 (9th Cir. 2005); see also Batson v. Comm'r of Soc. Sec. Admin.,
10 359 F.3d 1190, 1193 (9th Cir. 2004)("if evidence exists to support more
11 than one rational interpretation, we must defer to the Commissioner's
12 decision"). However, the Court may review only the reasons stated by
13 the ALJ in his decision "and may not affirm the ALJ on a ground upon
14 which he did not rely." Orn, 495 F.3d at 630; see also Connett, 340
15 F.3d at 874. The Court will not reverse the Commissioner's decision if
16 it is based on harmless error, which exists only when it is "clear from
17 the record that an ALJ's error was 'inconsequential to the ultimate
18 nondisability determination.'" Robbins v. Soc. Sec. Admin., 466 F.3d
19 880, 885 (9th Cir. 2006)(quoting Stout v. Comm'r, 454 F.3d 1050, 1055-56
20 (9th Cir. 2006)); see also Tommasetti, 533 F.3d at 1038; Burch, 400 F.3d
21 at 679.

22
23 **DISCUSSION**
24

25 Plaintiff alleges four issues: (1) whether the ALJ properly
26 considered the treating physician's opinion; (2) whether the ALJ
27 properly developed the record; (3) whether the ALJ properly considered
28 plaintiff's testimony; and (4) whether the ALJ posed a complete

1 hypothetical question to the vocational expert. (Joint Stipulation
2 "Joint Stip." at 2.) These issues are addressed below.

3
4 **I. The ALJ Properly Determined That Dr. Yen Lai Was Not Plaintiff's**
5 **Treating Physician.**

6
7 Generally, a treating physician's opinion is given greater weight,
8 because "he is employed to cure and has a greater opportunity to know
9 and observe the patient as an individual." Magallanes v. Bowen, 881
10 F.2d 747, 751 (9th Cir. 1989)(citation omitted). The weight given to a
11 treating physician's opinion is directly proportional to the length of
12 the relationship between the physician and claimant and the frequency of
13 the examinations. 20 C.F.R. § 416.927(d)(2). A treating physician's
14 opinion may only be given controlling weight when it is well supported
15 by medically acceptable clinical and laboratory diagnosis techniques and
16 it is consistent with other substantial evidence in the record. *Id.*
17 When the opinion of a treating physician is contradicted, it may be
18 rejected by the ALJ only for "specific, legitimate" reasons, based on
19 substantial evidence in the record. Magallanes, 881 F.2d at 751; Thomas
20 v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002)("The ALJ need not accept
21 the opinion of any physician, including a treating physician, if that
22 opinion is brief, conclusory, and inadequately supported by clinical
23 findings."); see also Batson, 359 F.3d at 1195 & n.3 (9th Cir.
24 2004)(upholding the ALJ's rejection of an opinion that was "conclusory
25 in the form of a check-list," and lacked supporting clinical findings);
26 Crane v. Shalala, 76 F.3d 251, 253 (9th Cir. 1996)(the ALJ properly
27 rejected doctors' psychological evaluations, because they were contained
28 in check-off forms and lacked any explanation of their bases).

1 Plaintiff contends that the ALJ improperly concluded that Dr. Yen
2 Lai was not the treating physician. The Court disagrees.

3
4 The record includes a one-page Authorization to Release Medical
5 Information form, dated December 20, 2007, which was completed by Dr.
6 Lai, plaintiff's purported treating physician. (A.R. 241.) On this
7 check-box form, Dr. Lai indicated no diagnosis, but checked the box
8 indicating that the patient was not able to work.¹ (*Id.*)

9
10 The ALJ properly rejected Dr. Lai's check-box form, because it was
11 not supported by any treatment notes or objective evidence and the
12 treatment notes in the record do not support the finding that plaintiff
13 has the "marked" limitations Dr. Lai indicated. The ALJ further noted
14 that "there is no evidence in the record of Dr. Lai ever treating the
15 claimant. In fact, the claimant's last documented medical treatment was
16 with Dr. Leslie Po in April 2007, and at that time, Dr. Po noted that
17 the claimant's anemia had resolved." (A.R. 16.) In her portion of the
18 Joint Stipulation, plaintiff failed to cite any treatment records
19 corroborating Dr. Lai's check-box form opinions. Instead, plaintiff
20 attempts to convince the Court that there "clearly" is a treating
21 relationship between her and Dr. Lai, because she scheduled a future
22 appointment with him on January 10, 2008. (Joint Stip. at 4.)

23
24

¹ In this stand alone check-box form, Dr. Lai indicated that: (1)
25 plaintiff had a medically verifiable condition that would limit or
26 prevent her from performing tasks; (2) the onset date of the condition
27 was 2003, the condition was chronic, and it would last until June 30,
28 2008; (3) plaintiff was actively seeking treatment, and her next
appointment date was January 10, 2008; (4) plaintiff was not able to
work; (5) plaintiff could not provide care for her children; and (6)
plaintiff's condition requires someone to be in the home to care for
her.

1 The Court is not convinced that Dr. Lai is properly viewed as a
2 treating physician within the meaning of the Social Security
3 regulations. See 20 C.F.R. § 416.902 (defining "treating source" as
4 someone who provides medical treatment or evaluation and who has or has
5 had "an ongoing treatment relationship with" the claimant, which means
6 seeing the physician "with a frequency consistent with acceptable
7 medical practice for the type of treatment and/or evaluation required
8 for" the claimant's condition). Other than on a check-box form, Dr.
9 Lai's name appears nowhere in the record. In fact, the record
10 demonstrates that plaintiff saw Dr. Lai only the once, *i.e.*, on December
11 20, 2007, the date the physician filled out the form.

12
13 The one-page Authorization to Release Medical Information form does
14 not establish that plaintiff was treated by Dr. Lai, and it certainly
15 does not establish an ongoing treatment relationship. A primary reason
16 the Court gives deference to treating physicians is because they have an
17 opportunity to know and observe their patients. The fact that an
18 appointment was scheduled in the future does not have bearing on
19 plaintiff's argument, because it does not show that Dr. Lai had an
20 opportunity to know and observe the patient at the time the
21 Authorization to Release Medical Information form was filled out.

22
23 Accordingly, the Court finds no error in the ALJ's decision to
24 reject the Authorization to Release Medical Information form prepared by
25 Dr. Lai.

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1 **II. The ALJ Properly Developed The Record.**

2
3 The ALJ in a social security case has an independent duty to fully
4 and fairly develop the record and to assure that the claimant's
5 interests are considered, even when the claimant is represented, as in
6 this case. Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir.
7 2001)(*citing* Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996));
8 Crane, 76 F.3d at 255 (*citing* Brown v. Heckler, 713 F.2d 441, 443 (9th
9 Cir. 1983)). However, "[a]n ALJ's duty to develop the record further is
10 triggered only when there is ambiguous evidence or when the record is
11 inadequate to allow for proper evaluation of the evidence." Mayes v.
12 Massanari, 276 F.3d 453, 459-60 (9th Cir. 2001)(*citing* Tonapetyan, 242
13 F.3d at 1150).

14
15 Plaintiff contends that the ALJ failed to properly develop the
16 record regarding a scheduled future appointment between plaintiff and
17 Dr. Lai. (Joint Stip. at 7.) Contrary to plaintiff's contention, the
18 ALJ properly satisfied his duty to fully and fairly develop the record.

19
20 In an effort to further develop the record, the ALJ asked
21 plaintiff's counsel, at the April 23, 2008 hearing, if the medical
22 record was complete. (A.R. 244.) Plaintiff's counsel responded, "I
23 think so." (A.R. 245.) In addition, the ALJ asked plaintiff at the
24 same hearing if she was being treated by, or seeing, a doctor.
25 Plaintiff indicated that she was not being treated by, or seeing, a
26 doctor. (A.R. 250.) Plaintiff now claims "it is clear that [she] has
27 a treating relationship with Dr. Lai" (Joint Stip. at 9), and the ALJ
28 improperly failed to request records of a future scheduled appointment

1 between them. Plaintiff had ample opportunity to present the evidence
2 of this "appointment" to the ALJ, the Appeals Council, and to this
3 Court, but she has not done so. In fact, nothing in the record
4 indicates that the appointment with Dr. Lai that was scheduled for after
5 the Administrative Hearing even took place.

6
7 Given the circumstances, the ALJ satisfied his duty and was not
8 obligated to develop the record regarding this issue. Plaintiff's
9 medical record, Dr. Concepcion A. Enriquez's examination, and Dr.
10 Rocelly Ella-Tamayo's examination sufficed to present a full and clear
11 picture of plaintiff's impairment. Additionally, Dr. Enriquez's and Dr.
12 Ella-Tamayo's examination reports were substantiated with objective
13 medical evidence on which the ALJ could reasonably base his decision.
14 (A.R. 136-39, 156-62.) The ALJ properly evaluated the claimant's
15 symptoms and limitations, because the objective evidence in the record
16 was neither ambiguous nor inadequate. Therefore, the ALJ was not
17 required to further develop the record. See Mayes, 276 F.3d at 459-60.

18
19 Accordingly, plaintiff's argument that the ALJ failed to fully and
20 fairly develop the record is rejected.

21
22 **III. The ALJ's Finding Regarding The Credibility Of Plaintiff's Claimed**
23 **Symptoms And Limitations Is Affirmed.**

24
25 The Court gives great weight to the ALJ's credibility assessment.
26 Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir. 1990); Brawner v.
27 Secretary, 839 F.2d 432, 433 (9th Cir. 1988)(recognizing that the ALJ's
28 credibility determination is to be given great weight when supported

1 specifically). In rendering a credibility evaluation, the ALJ may
2 consider: "(1) ordinary techniques of credibility evaluation, such as
3 the claimant's reputation for lying, prior inconsistent statements
4 concerning the symptoms, and other testimony by the claimant that
5 appears less than candid; (2) unexplained or inadequately explained
6 failure to seek treatment or to follow prescribed course of treatment;
7 and (3) the claimant's daily activities." Smolen, 80 F.3d at 1284.
8 When an ALJ's decision rests on a negative credibility evaluation, "the
9 ALJ must make findings on the record and must support those findings by
10 pointing to substantial evidence on the record." Ceguerra v. Sec'y of
11 Health & Human Svcs., 933 F.2d 735, 738 (9th Cir. 1991); Orteza v.
12 Shalala, 50 F.3d 748, 750 (9th Cir. 1995)(the ALJ's findings must be
13 "sufficiently specific to permit the reviewing court to conclude that
14 the ALJ did not arbitrarily discredit the claimant's testimony").
15 Further, when the "ALJ has made specific findings justifying a decision
16 to disbelieve an allegation of excess pain, and those findings are
17 supported by substantial evidence in the record, [the Court's] role is
18 not to second-guess that decision." Fair v. Bowen, 885 F.2d 597, 604
19 (9th Cir. 1989).

20
21 Plaintiff contends that the ALJ failed to provide adequate reasons
22 for rejecting plaintiff's credibility. (Joint Stip. at 10.)
23 Specifically, plaintiff claims that "[t]he ALJ's findings to support his
24 conclusion that plaintiff was not credible are not supported by
25 substantial evidence, and accordingly, the conclusion that plaintiff has
26 the residual functional capacity to perform her past relevant work also

1 is not supported by substantial evidence."² (*Id.*) For the reasons that
2 follow, the Court concludes that, in rendering his adverse credibility
3 finding, the ALJ properly considered plaintiff's testimony and gave the
4 requisite clear and convincing reasons to support his decision not to
5 credit plaintiff's testimony regarding her symptoms and limitations
6 fully.

7
8 First, the ALJ indicated that plaintiff's testimony was
9 inconsistent with the presence of an incapacitating or debilitating
10 medical condition. As noted above, one form of evidence on which an ALJ
11 may rely to assess claimant credibility is, "an unexplained, or
12 inadequately explained, failure to seek treatment or follow a prescribed
13 course of treatment." Fair, 885 F.2d at 603; see also Montalvo v.
14 Astrue, 237 Fed. Appx. 259, 262 (9th Cir. 2007)(finding that plaintiff's
15 failure to comply with certain aspects of her treatment plan was a clear
16 and convincing reason to reject her testimony); Flaten v. Sec'y of
17 Health & Human Servs., 44 F.3d 1453, 1464 (9th Cir. 1995)(finding it
18 appropriate for the ALJ to discount plaintiff's credibility because of
19 a lack of medical care during a period of claimed disability); Contreras
20 v. Astrue, 2010 U.S. Dist. LEXIS 52787, *32 (C.D. Cal. 2010)(finding
21 that "[p]laintiff's failure to comply with her medical treatment plan
22 [wa]s a clear and convincing reason to discredit her testimony"). While
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27 ² Plaintiff misstated the ALJ's finding. The ALJ concluded that
28 plaintiff has no past relevant work experience and is capable of
performing "other work" that exists in significant numbers in the
national economy. (A.R. 18-19.)

1 there are acceptable reasons for failure to follow prescribed treatment,³
2 "a claimant's failure to assert one, or a finding by the ALJ that the
3 proffered reason is not believable, can cast doubt on the sincerity of
4 the claimant's pain testimony." Fair, 885 F.2d at 603.

5
6 As the ALJ noted, plaintiff did not follow her doctor's prescribed
7 course of treatment to mitigate her menstrual bleeding problem. The ALJ
8 correctly found that "[t]he claimant was advised to take oral
9 contraceptive pills to help control her bleeding, but she declined to
10 follow this advice because she was afraid of gaining weight." (A.R.
11 17.) Plaintiff's fear of gaining weight hardly constitutes a "good
12 reason" for failing to comply with her doctor's prescribed treatment.
13 See examples of "good reasons" at n.3 *supra*; see also 20 C.F.R. §
14 416.930(b) (stating that claimant's failure to follow prescribed
15 treatment without good reason will result in a finding of not disabled).
16 Additionally, as the ALJ noted, it appears that plaintiff's menstrual

17
18 ³ As set forth in 20 C.F.R. § 416.930(c), the following are examples
19 of good reasons for not following prescribed treatment:

20 (1) The specific medical treatment is contrary to the
21 established teaching and tenets of your religion.

22 (2) The prescribed treatment would be cataract surgery for one
23 eye, when there is an impairment of the other eye resulting in
24 a severe loss of vision and is not subject to improvement
25 through treatment.

26 (3) Surgery was previously performed with unsuccessful results
27 and the same surgery is again being recommended for the same
28 impairment.

(4) The treatment because of its magnitude (e.g. open heart
surgery), unusual nature (e.g., organ transplant), or other
reason is very risky for you; or

(5) The treatment involves amputation of an extremity, or a
major part of an extremity.

1 bleeding problem "is apparently not so severe as to [cause her to]
2 comply with her physician's recommended course of treatment." (A.R.
3 17.) Furthermore, as the ALJ correctly observed, "the claimant's
4 medical treatment has been routine and conservative, and she has gone
5 for long periods of time without any treatment whatsoever." (*Id.*) The
6 record contains no evidence of medical treatment after April 2007.⁴ On
7 April 23, 2008, plaintiff admitted that she was not being treated by a
8 doctor. (A.R. 250.) The ALJ determined that plaintiff's inconsistent
9 medical treatment was not congruent with a disabling condition.⁵

10
11 Second, plaintiff stated that she achieved relief by using Tylenol.
12 (A.R. 249.) It is well established that "evidence of 'conservative
13 treatment' is sufficient to discount a claimant's testimony regarding
14 [the] severity of an impairment." Tommasetti, 533 F.3d at 1039 (*quoting*
15 Parra v. Astrue, 481 F.3d 742, 750-51 (9th Cir. 2007)). While plaintiff
16 contended that she is unable to take prescription pain medication
17 because it made her dizzy (A.R. 157, 251), the ALJ could reasonably
18 deduce that she achieved adequate relief with Tylenol, because the
19 record does not indicate that she pursued alternative kinds of pain
20 management therapies (A.R. 17.). See Meanel v. Apfel, 172 F.3d 1111,
21 1114 (9th Cir. 1999)(rejecting subjective pain testimony where
22 petitioner's "claim that she experienced pain approaching the highest
23

24
25 ⁴ Dr. Lai did submit an Authorization to Release Medical Information
26 form on December 20, 2007, but there is no evidence in the record of Dr.
27 Lai ever treating the claimant. (A.R. 16.)

28 ⁵ The ALJ noted, "[i]n all, [plaintiff]'s medical condition is stable
and relatively benign based on objective findings. [Plaintiff]'s
physical examinations have been essentially normal and, neurologically,
the claimant is intact." (A.R. 17.)

1 level imaginable was inconsistent with the 'minimal, conservative
2 treatment' that she received").

3
4 Third, the ALJ cited the conflict between plaintiff's subjective
5 complaints and the objective medical evidence in the record as a further
6 reason to undermine plaintiff's credibility. While not adequate as a
7 sole basis for discounting a plaintiff's subjective testimony, the
8 inconsistency of a plaintiff's testimony and objective evidence is a
9 legitimate factor to consider, along with other factors, in assessing an
10 ALJ's adverse credibility finding. See Morgan v. Comm'r of Soc. Sec.
11 Admin., 169 F.3d 595, 600 (9th Cir. 1999)("Where, as here, the ALJ has
12 made specific findings justifying a decision to disbelieve an allegation
13 . . . and those findings are supported by substantial evidence in the
14 record, our role is not to second-guess that decision.")(quoting Fair,
15 885 F.2d at 603). Although plaintiff's medically determinable
16 impairment of having a retained IUD could reasonably be expected to
17 produce pain and other symptoms, the record does not support plaintiff's
18 allegations that such pain and symptoms cause her to be totally
19 disabled.

20
21 With respect to plaintiff's allegations that she suffers from lower
22 back and abdominal pain to the extent that she cannot sit for more than
23 an hour or stand for longer than 10 to 15 minutes (Joint Stip. at 10.),
24 the weight of medical evidence proves otherwise. On April 19, 2007, Dr.
25 Enriquez provided an internal medical evidence consultation report in
26 which he concluded that plaintiff "can stand and/or walk with normal
27 breaks for six hours in an eight-hour workday . . . [and] can sit with
28 normal breaks for six hours in an eight hour day." (A.R. 139.) Dr.

1 Ella-Tamayo's March 13, 2006 internal medicine evaluation revealed that
2 plaintiff's ability to sit was unrestricted, and she could stand and
3 walk two hours a day. (A.R. 160.) As the ALJ correctly noted, these
4 doctors' opinions are "well reasoned . . . [and] give great probative
5 weight." (A.R. 14, 16.) In addition to these medical opinions that
6 plaintiff can sit for periods longer than an hour and stand for periods
7 longer than 10 to 15 minutes at a time, and notwithstanding plaintiff's
8 statements that she does not go outside and only walks from her bedroom
9 to the kitchen (A.R. 252), plaintiff testified that she flew for 12
10 hours to Bangladesh with her husband and small child, although she
11 testified that she was medicated and slept throughout the flight (A.R.
12 255-56).

13
14 Lastly, although there is a report from Dr. Po, dated April 18,
15 2007, indicating that plaintiff was not able to work, this conclusory
16 report was not substantiated by any tests or objective findings. (A.R.
17 240.) Additionally, the report specified that the disability was
18 temporary and was expected to end on October 18, 2007. (*Id.*) Moreover,
19 as the ALJ noted, "[n]o specific functional limitations were indicated."
20 (A.R. 16, 240.) The above-discussed Authorization to Release Medical
21 Information form submitted by Dr. Lai, on December 20, 2007, also
22 asserted that plaintiff was not able to work. Like Dr. Po's report, Dr
23 Lai's check-box form was wholly conclusory and not accompanied by any
24 objective medical evidence or specific functional limitations.⁶ The ALJ
25

26
27 ⁶ Although not mentioned by the ALJ, the Authorization to Release
28 Medical Information is internally inconsistent, given that Dr. Lai
states that plaintiff's condition is chronic, yet also states that her
condition would only last until June 30, 2008.

1 further noted, "there is no evidence in the record of Dr. Lai ever
2 treating claimant." (A.R. 16.)

3
4 Accordingly, the ALJ properly concluded that plaintiff's
5 allegations of disabling symptoms were not credible.

6
7 **IV. The ALJ Posed A Complete Hypothetical To The Vocational Expert.**

8
9 Hypothetical questions posed to the vocational expert must
10 accurately describe all of the limitations and restrictions of the
11 claimant that are supported by the record. Tackett v. Apfel, 180 F.3d
12 1094, 1101 (9th Cir. 1999). However, the ALJ is not required to include
13 limitations for which there is insufficient, if any, supporting
14 evidence. See Osenbrock v. Apfel, 240 F.3d 1147, 1164-65 (9th Cir.
15 2001).

16
17 Plaintiff argues that the hypothetical posed to the vocational
18 expert was devoid of her "mental impairment and limitations" and thus,
19 cannot be used to assess her work capabilities. (Joint Stip. at 16.)
20 Critically, however, plaintiff does not mention any specific mental
21 impairment in the Joint Stipulation. (*Id.*) At the 2007 hearing, the
22 vocational expert testified that plaintiff had no past relevant work
23 experience. (A.R. 257.) The ALJ posed the following hypothetical
24 question to the vocational expert:

25
26 We have a younger individual with the equivalent of a high
27 school education. This person is literate, speaks English.
28 In the first hypothetical, this person is capable of sitting

1 six hours out of an eight-hour day, standing and walking two
2 hours out of an eight-hour day, can occasionally lift 20
3 pounds, frequently lift 10 pounds, can occasionally climb
4 stairs, should never climb ladders or scaffolds, can
5 occasionally balance, can occasionally stoop, occasionally
6 kneel, occasionally crouch, occasionally crawl. Would there
7 be any jobs in the labor market that this person could do?
8

9 (A.R. 258.) In response, the vocational expert opined that, with these
10 limitations, jobs were available for plaintiff in the workforce. (*Id.*)
11

12 As discussed above, the ALJ's residual functional capacity
13 assessment included limitations that sufficiently addressed plaintiff's
14 allegations of pain and physical limitations. To the extent plaintiff
15 is claiming limitations in excess of the ALJ's RFC finding, the ALJ
16 properly declined to include them in his RFC assessment and in the above
17 hypothetical posed to the vocational expert. See Bayliss v Barnhart,
18 427 F.3d 1211, 1217-18 (9th Cir. 2005)(holding that the residual
19 functional capacity determination need only include limitations the ALJ
20 found supported by the evidence).
21

22 Therefore, this Court finds that the ALJ posited a complete
23 hypothetical, based on a proper residual functional capacity
24 determination that was supported by substantial evidence in the record,
25 even if that assessment is susceptible to more than one rational
26 interpretation. Batson, 359 F.3d at 1197.
27
28

1 **CONCLUSION**

2

3 For the foregoing reasons, the Court finds that the Commissioner's

4 decision is supported by substantial evidence and is free from material

5 legal error. Neither reversal of the Commissioner's decision nor remand

6 is warranted. Accordingly, IT IS ORDERED that Judgment shall be

7 entered affirming the decision of the Commissioner of the Social

8 Security Administration and dismissing this case with prejudice.

9

10 IT IS FURTHER ORDERED that the Clerk of the Court shall serve

11 copies of this Memorandum Opinion and Order and the Judgment on counsel

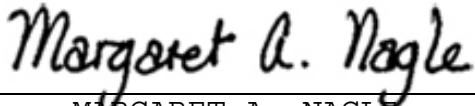
12 for plaintiff and for defendant.

13

14 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

15

16 DATED: September 24, 2010

17 

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MARGARET A. NAGLE

19 UNITED STATES MAGISTRATE JUDGE

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