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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MATTIE L. PRUITT,	)	NO. CV 11-8158-E
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
MICHAEL J. ASTRUE, COMMISSIONER	)	
OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	
_____	)	

**PROCEEDINGS**

Plaintiff filed a Complaint on October 3, 2011, seeking review of the Commissioner's denial of benefits. The parties filed a consent to proceed before a United States Magistrate Judge on October 26, 2011.

Plaintiff filed a motion for summary judgment on May 1, 2012. Defendant filed a cross-motion for summary judgment on May 31, 2012. The Court has taken both motions under submission without oral argument. See L.R. 7-15; "Order," filed October 4, 2011.

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1 **BACKGROUND**

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3 Plaintiff, a former custodian, asserted disability since June 18,  
4 2008, based primarily on alleged pain (Administrative Record ("A.R.")  
5 26-35, 140-48). The Administrative Law Judge ("ALJ") reviewed the  
6 record and heard testimony from Plaintiff and from a vocational expert  
7 (A.R. 9-413). The ALJ found that Plaintiff has the severe impairments  
8 of an "ankle disorder and back disorder," but retains the residual  
9 functional capacity to perform light work with certain restrictions  
10 (A.R. 15). Relying on the vocation expert's testimony, the ALJ  
11 concluded that there exist significant numbers of jobs Plaintiff can  
12 perform (A.R. 18-19, 36-37). The Appeals Council apparently denied  
13 review.<sup>1</sup>

14  
15 **STANDARD OF REVIEW**

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17 Under 42 U.S.C. section 405(g), this Court reviews the  
18 Administration's decision to determine if: (1) the Administration's  
19 findings are supported by substantial evidence; and (2) the  
20 Administration used correct legal standards. See Carmickle v.  
21 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,  
22 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such  
23 relevant evidence as a reasonable mind might accept as adequate to  
24 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
25 (1971) (citation and quotations omitted); see also Widmark v.

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27 \_\_\_\_\_  
28 <sup>1</sup> The Complaint alleges that the Appeals Council denied  
review on August 3, 2011 (Complaint at 2). Defendant's Answer  
admits the truth of this allegation (Answer at 1).

1 Barnhart, 454 F.3d 1063, 1067 (9th Cir. 2006).

2  
3 This Court "may not affirm [the Administration's] decision simply  
4 by isolating a specific quantum of supporting evidence, but must also  
5 consider evidence that detracts from [the Administration's]  
6 conclusion." Ray v. Bowen, 813 F.2d 914, 915 (9th Cir. 1987)  
7 (citation and quotations omitted); see Lingenfelter v. Astrue, 504  
8 F.3d 1028 (9th Cir. 2007) (same). However, the Court cannot disturb  
9 findings supported by substantial evidence, even though there may  
10 exist other evidence supporting Plaintiff's claim. See Torske v.  
11 Richardson, 484 F.2d 59, 60 (9th Cir. 1973), cert. denied, 417 U.S.  
12 933 (1974); Harvey v. Richardson, 451 F.2d 589, 590 (9th Cir. 1971).

#### 13 14 DISCUSSION

15  
16 After consideration of the record as a whole, Defendant's motion  
17 is granted and Plaintiff's motion is denied. The Administration's  
18 findings are supported by substantial evidence and are free from  
19 material<sup>2</sup> legal error.

20  
21 Plaintiff argues that the ALJ erred in finding Plaintiff's  
22 subjective complaints not fully credible. For the reasons discussed  
23 below, this argument lacks merit.

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27 <sup>2</sup> The harmless error rule applies to the review of  
28 administrative decisions regarding disability. See McLeod v.  
Astrue, 640 F.3d 881, 888 (9th Cir. 2011); Burch v. Barnhart, 400  
F.3d 676, 679 (9th Cir. 2005).

1 An ALJ's assessment of a claimant's credibility is entitled to  
2 "great weight." Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir.  
3 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). The  
4 discounting of a claimant's testimony regarding subjective complaints  
5 must be supported by specific, cogent findings. See Lester v. Chater,  
6 81 F.3d 821, 834 (9th Cir. 1995); see also Berry v. Astrue, 622 F.3d  
7 1228, 1234 (9th Cir. 2010) (reaffirming same); Varney v. Secretary of  
8 Health and Human Serv., 846 F.2d 581, 584 (9th Cir. 1988) (generally  
9 discussing specificity requirement); but see Smolen v. Chater, 80 F.3d  
10 1273, 1282-84 (9th Cir. 1996) (indicating that ALJ must offer  
11 "specific, clear and convincing" reasons to reject a claimant's  
12 testimony where there is no evidence of malingering).<sup>3</sup> Contrary to  
13 Plaintiff's arguments, the ALJ stated sufficient reasons for deeming  
14 Plaintiff's testimony less than fully credible.

15  
16 First, the ALJ stated that the objective medical evidence did not  
17 support Plaintiff's complaints of constant, intense and debilitating  
18 pain (A.R. 16-17). Although a claimant's credibility "cannot be  
19 rejected on the sole ground that it is not fully corroborated by  
20 objective medical evidence, the medical evidence is still a relevant  
21 factor. . . ." Rollins v. Massanari, 261 F.3d 853, 857 (9th Cir.

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22  
23 <sup>3</sup> In the absence of evidence of "malingering," most  
24 recent Ninth Circuit cases have applied the "clear and  
25 convincing" standard. See, e.g., Molina v. Astrue, 674 F.3d 1104  
26 (9th Cir. 2012); Taylor v. Commissioner, 659 F.3d 1228, 1234 (9th  
27 Cir. 2011); Valentine v. Commissioner, 574 F.3d 685, 693 (9th  
28 Cir. 2009); Carmickle v. Commissioner, 533 F.3d at 1160;  
Lingenfelter v. Astrue, 504 F.3d at 1036; Ballard v. Apfel, 2000  
WL 1899797, at \*2 n.1 (C.D. Cal. Dec. 19, 2000) (collecting  
cases). In the present case, the ALJ's findings are sufficient  
under either standard, so the distinction between the two  
standards (if any) is academic.

1 2001).

2  
3 Second, the ALJ cited the nature of Plaintiff's medical treatment  
4 (A.R. 17-18). Plaintiff's treatment consists of taking the  
5 medications Motrin, Cyclobenzaprine (Flexeril)<sup>4</sup> and Methocarbamol  
6 (Robaxin)<sup>5</sup> (A.R. 28). Plaintiff seldom received follow-up care for  
7 her complaints of pain and did not undergo more aggressive treatment,  
8 such as narcotic or steroidal medication, during the period of her  
9 alleged disability<sup>6</sup> (A.R. 17-18, 374-97). The ALJ properly  
10 characterized Plaintiff's treatment as "conservative." See, e.g.,  
11 Hernandez v. Astrue, 2008 WL 2705083, at \*3 (C.D. Cal. 2008) (Motrin  
12 is conservative treatment); Thomas v. Astrue, 2011 WL 4529599, at \*4  
13 (C.D. Cal. Sept. 30, 2011) (Motrin is conservative treatment); Scott  
14 v. Perio, 2005 WL 711884, at \*2 (W.D. N.Y. March 25, 2005) (Robaxin is  
15 conservative treatment); Muro v. Astrue, 2008 WL 5076448, at \*5 (C.D.  
16 Cal. Nov. 28, 2008) (Flexeril is conservative treatment, as is  
17 physical therapy). A conservative course of treatment may discredit a  
18 claimant's allegations of disabling symptoms. See Parra v. Astrue,  
19 481 F.3d 742, 750-51 (9th Cir. 2007), cert. denied, 552 U.S. 1141  
20 (2008) (treatment of ailments with over-the-counter pain medication is  
21 "conservative treatment" sufficient to discount testimony); Meanel v.

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23 <sup>4</sup> Flexeril (Cyclobenzaprine) is a muscle relaxant. Wilkinson v. Astrue, 2012 WL 1580993, at \*5 n.27 (M.D. Pa. May 4,  
24 2012).

25 <sup>5</sup> Robaxin (Methocarbamol) is a muscle relaxant. See  
26 James v. Murphy, 2012 WL 487040, at \*7 n.6 (C.D. Cal. Jan. 24,  
2012), adopted, 2012 WL 487036 (C.D. Cal. Feb. 15, 2012).

27 <sup>6</sup> Plaintiff claimed at the hearing that, although she had  
28 not undergone physical therapy, she was on a list for such  
therapy (A.R. 32-33).

1 Apfel, 172 F.3d 1111, 1114 (9th Cir. 1999) (failure to request "any  
2 serious medical treatment for [claimant's] supposedly excruciating  
3 pain" was adequate reason to reject claimant's pain testimony);  
4 Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (conservative  
5 treatment can suggest a lower level of both pain and functional  
6 limitation, justifying adverse credibility determination); see also  
7 Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991) (failure to  
8 seek medical treatment can justify an adverse credibility  
9 determination); Fair v. Bowen, 885 F.2d 597, 603-04 (9th Cir. 1989)  
10 (same).

11  
12 Third, the ALJ noted certain inconsistencies between Plaintiff's  
13 subjective complaints and the observations of medical examiners (A.R.  
14 16) ("Treating notes in December 2008 show that the claimant has full  
15 range of motion in her extremities. (Exhibit C3F/6). According to  
16 the consultative exam, the claimant had normal gait and is able to  
17 squat, heel walk, and toe walk (Exhibit C4F). She does not require an  
18 assistive device to ambulate, is able to sit in a chair comfortably,  
19 and is able to rise from sitting and supine position with no  
20 difficulty"; see also A.R. 378, 397-400). Disparity between a  
21 claimant's representations and the observations of medical examiners  
22 properly impeach a claimant's credibility. See, e.g., Copeland v.  
23 Bowen, 861 F.2d 536, 541 (9th Cir. 1988).

24  
25 Fourth, the ALJ also noted an incongruity between Plaintiff's  
26 testimony regarding allegedly constant, debilitating pain and the lack  
27 of "severe disuse muscle atrophy that would be compatible with her  
28 alleged inactivity and inability to function" (A.R. 17). A lack of

1 disuse muscle atrophy can be a "clear and convincing" reason for  
2 rejecting the credibility of a claimant who testifies to debilitating  
3 pain. See Osenbrock v. Apfel, 240 F.3d 1157, 1165-66 (9th Cir. 2001);  
4 see also Stiles v. Astrue, 256 Fed. App'x 994, 997-98 (9th Cir. 2007);  
5 Meanel v. Apfel, 172 F.3d at 1114.

6  
7 Because the ALJ's credibility findings were sufficiently specific  
8 to allow this Court to conclude that the ALJ rejected Plaintiff's  
9 testimony on permissible grounds, Moisa v. Barnhart, 367 F.3d 882, 885  
10 (9th Cir. 2004), the Court defers to the ALJ's credibility findings.  
11 See Lasich v. Astrue, 252 Fed. App'x 823, 825 (9th Cir. 2007) (court  
12 will defer to ALJ's credibility determination when the proper process  
13 is used and proper reasons for the decision are provided); accord  
14 Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1464  
15 (9th Cir. 1995). Deference to the ALJ's credibility findings requires  
16 affirmance of the administrative decision in the present case.

## 17 18 CONCLUSION

19  
20 For all of the reasons discussed herein, Plaintiff's motion for  
21 summary judgment is denied and Defendant's motion for summary judgment  
22 is granted.<sup>7</sup>

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24  
25 <sup>7</sup> The Court has considered and rejected each of  
26 Plaintiff's arguments. Neither Plaintiff's arguments nor the  
27 circumstances of this case show any "substantial likelihood of  
28 prejudice" resulting from any error allegedly committed by the  
Administration. See generally McLeod v. Astrue, 640 F.3d at 888  
(discussing the standards applicable to evaluating prejudice).

1 LET JUDGMENT BE ENTERED ACCORDINGLY.  
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3 DATED: June 5, 2012.  
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6 CHARLES F. EICK  
7 UNITED STATES MAGISTRATE JUDGE  
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