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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILOMENA FIGUEROA,)	Case No. CV 12-06742-OP
Plaintiff,)	
v.)	MEMORANDUM OPINION AND
CAROLYN W. COLVIN, ¹)	ORDER
Acting Commissioner of Social)	
Security,)	
Defendant.)	

The Court² now rules as follows with respect to the disputed issues listed in the Joint Stipulation (“JS”).³

¹ The Court substitutes Carolyn Colvin, Acting Commissioner of Social Security, as the defendant in this action pursuant to Rule 25(d) of the Federal Rules Civil Procedure.

² Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 11, 12.)

³ As the Court stated in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 9 at 3.)

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I.

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issues raised by Plaintiff as the grounds for reversal and/or remand are as follows:

- (1) Whether the Administrative Law Judge (“ALJ”) fully developed the record;
- (2) Whether the ALJ properly assessed Plaintiff’s credibility;
- (3) Whether the ALJ properly considered lay witness testimony;
- (4) Whether the ALJ properly considered Plaintiff’s combined impairments in making a Residual Functional Capacity (“RFC”) assessment; and
- (5) Whether the ALJ erred in relying on the Vocational Expert’s (“VE”) testimony.

(JS at 3, 31.)⁴

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial

⁴ In the listing of claims in the Joint Stipulation, both Claims Three and Five indicate a claim regarding the consideration of lay witness evidence. (JS at 3.) However, it is clear from the body of the document that Claim Three pertains to lay witness evidence while Claim Five relates to VE testimony. (Id. at 22-27, 31-34.)

1 evidence is “such relevant evidence as a reasonable mind might accept as adequate
2 to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The
3 Court must review the record as a whole and consider adverse as well as
4 supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986).
5 Where evidence is susceptible of more than one rational interpretation, the
6 Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450,
7 1452 (9th Cir. 1984).

8 III.

9 DISCUSSION

10 A. The ALJ’s Findings.

11 The ALJ found that Plaintiff has the severe impairments of grade 1
12 spondylolisthesis, degenerative disc disease, mild degenerative changes affecting
13 the lumbar spine, and status post left knee arthroscopic repair. (Administrative
14 Record (“AR”) at 30.) The ALJ found that Plaintiff had the residual functional
15 capacity (“RFC”) to perform light work with the following limitations: no
16 climbing ladders, ropes, and scaffolds; no stooping or crouching; and no
17 concentrated exposure to hazardous machinery, unprotected heights, and other
18 high risk, hazardous or unsafe conditions. (Id. at 30-31.) Relying on the
19 testimony of a vocational expert, the ALJ concluded that Plaintiff was not capable
20 of performing her past relevant work but could perform alternative work as a
21 sorter, inspector, and labeler. (Id. at 35-36.)

22 B. The ALJ Did Not Fail to Fully Develop the Record.

23 Plaintiff contends that the ALJ failed to properly develop the record and
24 appears to argue that the ALJ should have subpoenaed additional records from
25 Long Beach Memorial Medical Center regarding the treatment of Plaintiff’s
26 cardiac and gastric conditions. (JS at 3-6.)

27 Under the Commissioner’s regulations, both the disability benefits claimant
28 and the Social Security Administration bear a regulatory responsibility for

1 developing the evidentiary record. The claimant must produce medical evidence
2 showing that the claimant has an impairment, and how severe that impairment is
3 during the time the claimant claims to be disabled. See 20 C.F.R. §§ 404.1512(c)
4 (applicable to claims for disability benefits), 416.912(c) (applicable to claims for
5 SSI benefits). In addition, the SSA must make every reasonable effort to help the
6 claimant get medical reports from the claimant’s medical sources when the
7 claimant gives permission to request the reports. See 20 C.F.R. §§ 404.1512(d),
8 416.912(d).

9 The ALJ has an independent duty to fully and fairly develop a record in
10 order to make a fair determination as to disability, even where the claimant is
11 represented by counsel. See Celaya v. Halter, 332 F.3d 1177, 1183 (9th Cir.
12 2003); see also Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir. 2001) (citing
13 Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996); Crane v. Shalala, 76 F.3d
14 251, 255 (9th Cir. 1996) (citing Brown v. Heckler, 713 F.2d 441, 443 (9th Cir.
15 1983)). Ambiguous evidence, or the ALJ’s own finding that the record is
16 inadequate to allow for proper evaluation of the evidence, triggers the ALJ’s duty
17 to “conduct an appropriate inquiry.” See Tonapetyan, 242 F.3d at 1150 (citing
18 Smolen, 80 F.3d at 1288). That duty is heightened when the claimant is
19 unrepresented or is mentally ill and thus unable to protect his or her own interests.
20 Celaya, 332 F.3d at 1183; see also Tonapetyan, 242 F.3d at 1150; Crane, 76 F.3d
21 at 255. However, it is the plaintiff’s burden to prove disability. Bayliss v.
22 Barnhart, 427, F.3d 1211, 1217 (9th Cir. 2005) (quoting Meanel v. Apfel, 172
23 F.3d 1111, 1113 (9th Cir. 1999) (“The claimant bears the burden of proving that
24 she is disabled”)).

25 When the duty to develop the record is triggered, the ALJ can develop the
26 record by (1) making a reasonable attempt to obtain medical evidence from the
27 claimant’s treating sources; (2) ordering a consultative examination when the
28 medical evidence is incomplete or unclear and undermines the ability to resolve

1 the disability issue; (3) subpoenaing or submitting questions to the claimant's
2 physicians; (4) continuing the hearing; or (5) keeping the record open for more
3 supplementation. Tonapetyan, 242 F.3d at 1150; 20 C.F.R. § 416.917.

4 Plaintiff identifies five instances in the ALJ's opinion where the ALJ
5 concluded that the record did not support Plaintiff's contentions. Plaintiff argues
6 that these findings by the ALJ amount to a finding that the record was inadequate.
7 (JS at 5-6.) The record supports Plaintiff's assertion that the ALJ found that the
8 record did not support Plaintiff's contentions. (AR at 31-34.) However, the ALJ's
9 finding that the record does not contain evidence to support Plaintiff's contentions
10 is not equivalent to a finding that the record needs further development. Rather,
11 the lack of evidence is proof that Plaintiff's contentions lack merit. Were the
12 Court to find to the contrary, an ALJ would fail to fulfill his duty to develop the
13 record every time a claimant's allegations are unsupported by the record. Of
14 course, an ALJ has no duty to find evidence where no such evidence exists.

15 This is particularly true where, as here, Plaintiff fails to identify any
16 additional supportive evidence that the ALJ should have obtained. In fact,
17 Plaintiff failed to satisfy her initial burden of producing medical evidence showing
18 that she has a material cardiac or gastric condition. See 20 C.F.R. §§ 404.1512(c),
19 416.912(c). The only evidence produced by Plaintiff regarding her alleged cardiac
20 condition were discharge instructions indicating that she was treated for some
21 unidentified cardiac condition. (AR at 527-29.) Plaintiff has not provided any
22 proof that follow-up care was required or that she continued to suffer any
23 impairments as a result of this alleged cardiac condition. Similarly, the record
24 contains an After Visit Summary regarding Plaintiff's treatment for a gastric
25 condition. However, that summary indicates that the condition was acute and that
26 she need not return for followup for two months. (Id. at 536.) These minimal
27 records do not support a finding that Plaintiff exhibited a disabling cardiac or
28 gastric condition and were insufficient to put the ALJ on notice that the record was

1 insufficient to adjudicate Plaintiff's claims.

2 Plaintiff simply has failed to prove that the record was ambiguous or that
3 the ALJ found that the record was inadequate to allow for proper evaluation of the
4 evidence. Accordingly, Plaintiff has failed to establish that the ALJ's duty to
5 develop the record was triggered. Thus, there was no error.

6 **C. The ALJ's Consideration of Plaintiff's Credibility.**

7 Plaintiff contends that the ALJ improperly rejected her subjective
8 complaints of impairment. (JS at 9-17, 20-22.) The Court does not agree.

9 In his decision, the ALJ incorporated by reference the credibility
10 determination contained in the previous ALJ's decision denying benefits.⁵ (AR at
11 31.) In that prior opinion, the ALJ rejected Plaintiff's credibility as follows:

12 The claimant testified that she has back pain, left knee pain, joint
13 pain, her foot gives way. Medications make her sleepy. The claimant
14 only takes nonprescription ibuprofen for pain but said she also takes
15 medications she obtains in Mexico, which she reported provides one
16 month of relief. The claimant further testified that she can only sit less
17 than 30 minutes, lift less than 10 pounds, stand only a little bit, she
18 cannot bend, she spends the day sitting and lying down, cooks if she can
19 take her time and rest in between, and back support improves her
20 comfort but could not do any work 8 hours a day.

21 The claimant still drives, however, she can perform personal
22 grooming and hygiene, she can go to her medical appointments, she can
23

24 ⁵ On October 26, 2007, an ALJ denied Plaintiff's application for benefits in
25 a written decision. (AR at 52-59.) On April 6, 2009, the Appeals Council vacated
26 the ALJ decision and remanded the action for the resolution of the Step Five
27 analysis, specifically ordering further consideration of the vocational assessments
28 as compared to Plaintiff's RFC. (Id. at 454-55.) On February 17, 2010, the ALJ
issued the instant written decision denying Plaintiff's application for benefits.

1 cook and do laundry, and she can go to the grocery store and post office
2 without assistance. While the claimant does not have to be utterly
3 incapacitated in order to be found disabled, her activities of daily living,
4 although somewhat limited, nevertheless are not consistent with
5 allegations of disabling pain.

6 August, September and October 2006 physical therapy notes
7 indicate that, more than a month after the claimant's surgery, although
8 massage and lying on her left side alleviated pain, her pain nonetheless
9 was improving, her gait was normal, and she was weaning herself off the
10 use of crutches to ambulate. Further, the August 29, 2006 physical
11 therapy note reported a generally normal exam, aside from some low
12 back pain produced by an otherwise negative straight leg raising test –
13 again, this was only less than 2 months after knee surgery. This
14 evidence does not support the claimant's allegations of disabling pain.

15 The record indicates that the claimant declined cortisone
16 injections, which indicates that her pain is not as severe as alleged. The
17 claimant's doctor recommends limiting the back support and doing
18 strengthening exercises, contrary to what she is doing, which indicates
19 some treatment noncompliance that tends to lessen her credibility.

20 While the claimant[']s] complaint of left sided radiculopathy, and
21 treating workers' compensation orthopedic surgeon Dr. Thomas J.
22 Grogan diagnosed lumbar spine radiculopathy, there was no evidence of
23 radiculopathy on testing in January and August 2005 electromyograms.
24 Further, no functional problems were noted during the face-to-face
25 application interviews. This evidence also tends to lessen the credibility
26 of the claimant's allegations of disabling pain.

27 The claimant has a pristine earnings record, which shows a
28 motivation to work that actually tends to enhance her credibility. After

1 considering the evidence now of record, however, the Administrative
2 Law Judge finds . . . that the claimant’s underlying medically
3 determinable impairments could reasonably be expected to produce
4 some of the alleged symptoms, but that the statements concerning the
5 intensity, persistence and limiting effects of these symptoms are not
6 entirely credible.

7 (Id. at 54-55 (citation omitted).)

8 Once a claimant has presented medical evidence of an underlying
9 impairment that could reasonably be expected to cause the symptoms alleged, the
10 ALJ may only discredit the claimant’s testimony regarding subjective pain by
11 providing specific, clear, and convincing reasons for doing so. Lingenfelter v.
12 Astrue, 504 F.3d 1028, 1035-36 (9th Cir. 2007). An ALJ’s credibility finding
13 must be properly supported by the record and sufficiently specific to ensure a
14 reviewing court that the ALJ did not arbitrarily reject a claimant’s subjective
15 testimony. Bunnell v. Sullivan, 947 F.2d 341, 345-47 (9th Cir. 1991).

16 An ALJ may properly consider “testimony from physicians . . . concerning
17 the nature, severity, and effect of the symptoms of which [claimant] complains,”
18 and may properly rely on inconsistencies between claimant’s testimony and
19 claimant’s conduct and daily activities. See, e.g., Thomas v. Barnhart, 278 F.3d
20 954, 958-59 (9th Cir. 2002) (citation omitted). An ALJ also may consider “[t]he
21 nature, location, onset, duration, frequency, radiation, and intensity” of any pain or
22 other symptoms; “[p]recipitating and aggravating factors”; “[t]ype, dosage,
23 effectiveness, and adverse side-effects of any medication”; “[t]reatment, other than
24 medication”; “[f]unctional restrictions”; “[t]he claimant’s daily activities”;
25 “unexplained, or inadequately explained, failure to seek treatment or follow a
26 prescribed course of treatment”; and “ordinary techniques of credibility
27 evaluation,” in assessing the credibility of the allegedly disabling subjective
28 symptoms. Bunnell, 947 F.2d at 346-47; see also Soc. Sec. Ruling 96-7p; 20

1 C.F.R. 404.1529 (2005); Morgan v. Comm’r of Soc. Sec. Admin., 169 F.3d 595,
2 600 (9th Cir. 1999) (ALJ may properly rely on plaintiff’s daily activities, and on
3 conflict between claimant’s testimony of subjective complaints and objective
4 medical evidence in the record); Tidwell v. Apfel, 161 F.3d 599, 602 (9th Cir.
5 1998) (ALJ may properly rely on weak objective support, lack of treatment, daily
6 activities inconsistent with total disability, and helpful medication); Johnson v.
7 Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995) (ALJ may properly rely on the fact
8 that only conservative treatment had been prescribed); Orteza v. Shalala, 50 F.3d
9 748, 750 (9th Cir. 1995) (ALJ may properly rely on claimant’s daily activities and
10 the lack of side effects from prescribed medication).

11 **1. The ALJ’s Incorporation of the Prior ALJ Decision.**

12 Plaintiff does not challenge the credibility findings made in the prior ALJ
13 decision. Rather, Plaintiff argues that the prior decision is not material to the
14 current analysis because the Appeals Council vacated that prior decision when it
15 remanded the action to the ALJ for a new opinion. (JS at 20-22.) In drafting the
16 new opinion on remand, the ALJ incorporated portions of the previous analysis so
17 as to avoid having to redraft an identical analysis in the new opinion. Nothing
18 about the incorporation of the prior analysis is inconsistent with the Appeals
19 Council’s order for a new opinion. See Pitts v. Astrue, No. EDCV 11-230-OP,
20 2011 WL 5520319, *5 (C.D. Cal. Nov. 10, 2011) (ALJ’s decision on remand
21 incorporated portions of prior decision). Importantly, as detailed below, the
22 incorporated portion of the prior ALJ opinion provided sufficient reasoning for
23 rejecting Plaintiff’s credibility.

24 First, the ALJ rejected Plaintiff’s credibility because her reported activities
25 of daily living were inconsistent with her alleged disability. (AR at 55.) Daily
26 activities may be grounds for an adverse credibility finding “if a claimant is able to
27 spend a substantial part of his day engaged in pursuits involving the performance
28 of physical functions that are transferable to a work setting.” Fair v. Bowen, 885

1 F.2d 597, 603 (9th Cir. 1989); see also Burch v. Barnhart, 400 F.3d 676, 681 (9th
2 Cir. 2005) (adverse credibility finding based on daily activities may be proper “if a
3 claimant engaged in numerous daily activities involving skills that could be
4 transferred to the workplace”). Plaintiff admitted during the hearing and through
5 forms related to her disability application that she could drive, cook, bathe, run
6 light errands, attend medical appointments, socialize, and complete light
7 housework. (AR at 132, 163-64, 166, 547, 557.) The ability to maintain such a
8 high level of daily activities is inconsistent with Plaintiff’s allegations of total
9 disability. As a result, this was a clear and convincing reason for rejecting
10 Plaintiff’s credibility. See Thomas, 278 F.3d at 958-59 (inconsistency between
11 claimant’s testimony and claimant’s conduct supported rejection of the claimant’s
12 credibility); Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999)
13 (inconsistencies between claimant’s testimony and actions cited as clear and
14 convincing reason for rejecting the claimant’s testimony).

15 Next, the ALJ discounted Plaintiff’s allegations that her knee impairment
16 contributes to her total disability. (AR at 55.) While Plaintiff continues to allege
17 disability in part due to a left knee impairment (id. at 496), the medical record
18 shows a successful recovery from knee surgery. (Id. at 377, 389, 396, 401.) Of
19 course, an ALJ “may not reject a claimant’s subjective complaints based *solely* on
20 a lack of objective medical evidence to fully corroborate the alleged severity of
21 pain.” Bunnell, 947 F.2d at 345 (emphasis added). However, such a factor
22 remains relevant. Burch, 400 F.3d at 680-81 (ALJ may properly rely on
23 inconsistency between claimant’s subjective complaints and objective medical
24 findings); Morgan, 169 F.3d at 600 (ALJ may properly rely on conflict between
25 claimant’s testimony of subjective complaints and objective medical evidence in
26 the record). Here, the ALJ did not rely solely on the lack of medical evidence
27 supporting Plaintiff’s complaints of an ongoing knee impairment in rejecting her
28 credibility. Accordingly, this too was a clear and convincing reason for rejecting

1 Plaintiff's credibility.

2 The ALJ also discounted Plaintiff's subjective complaints of impairment for
3 the clear and convincing reason that Plaintiff did not fully comply with treatment
4 recommendations. (AR at 55.) A relevant factor in determining a claimant's
5 credibility is an "unexplained, or inadequately explained, failure to seek treatment
6 or follow a prescribed course of treatment." Bunnell, 947 F.2d at 346 (quoting
7 Fair, 885 F.2d at 603. A treatment note from February 2005 indicates that Plaintiff
8 refused cortisone injections for her back and knee pain due to a negative
9 experience in the past. (AR at 178, 426.) The same treatment note recommended
10 that Plaintiff continue her home exercise program, resume as many regular
11 activities as possible, and reduce the use of her lumbosacral mechanical support to
12 avoid weakening of her core muscles. (Id. at 178, 426.) Nevertheless, as is
13 apparent from Plaintiff's reports of limited physical activity, Plaintiff has not been
14 compliant with these recommendations for improving her muscle strength and
15 endurance.

16 The ALJ further noted that although Dr. Grogan diagnosed lumbar spine
17 radiculopathy, such a diagnosis was not supported by the objective medical
18 evidence. (Id. at 55.) Again, the lack of objective medical evidence is a relevant
19 factor in assessing a claimant's subjective complaints, but cannot act as the sole
20 basis for rejecting the subjective complaints of impairment. Bunnell, 947 F.3d at
21 345 (ALJ may not reject claimant's credibility based solely on a lack of objective
22 medical evidence); Burch, 400 F.3d at 680-81 (ALJ may properly rely on
23 inconsistency between claimant's subjective complaints and objective medical
24 findings); Morgan, 169 F.3d at 600 (ALJ may properly rely on conflict between
25 claimant's testimony of subjective complaints and objective medical evidence in
26 the record). Here, Plaintiff's workers' compensation physicians noted a diagnosis
27 of radiculopathy multiple times during Plaintiff's evaluations and treatment. (AR
28 at 242, 244, 270, 272, 324, 435.) However, there is not a single objective finding

1 in the record to support the diagnosis of radiculopathy. A January 2004 x-ray of
2 Plaintiff's lumbar spine resulted in only a question of an L5 spondylolysis on the
3 lateral view. (Id. at 211.) A March 2004 MRI of the lumbar spine was
4 unremarkable. (Id. at 206.) A January 2005 electromyogram resulted in normal
5 findings. (Id. at 184.) A February 2005 x-ray of the lumbosacral spine was
6 negative. (Id. at 236.) A May 2005 MRI indicated spondylolisthesis, disc
7 desiccation and bulge, mild spinal canal narrowing, and mild bilateral
8 neuroforaminal encroachment, but did not indicate a finding of radiculopathy. (Id.
9 at 258-59.) Finally, an August 2005 physician report notes that an
10 electrodiagnostic study had not revealed any evidence of lumbar radiculopathy or
11 peripheral neuropathy. (Id. at 343.) The lack of objective evidence confirming
12 radiculopathy is yet another clear and convincing reason for rejecting Plaintiff's
13 subjective complaints of impairment.

14 **2. The ALJ's New Credibility Analysis.**

15 Significantly, the ALJ updated his credibility findings in the current written
16 decision, citing the same factors discussed above in addition to the following
17 factors: (1) there is no evidence in the record to support Plaintiff's alleged
18 disabling cardiac, gastric, and psychiatric conditions (id. at 31, 32); (2) there is no
19 documentation of complaints of stress or headache to support Plaintiff's
20 complaints of such impairments (id. at 32); (3) Plaintiff's conservative regimen of
21 pain medications and sporadic treatment records undermines her complaints of
22 constant debilitating pain (id. at 32-33); and (4) there is no objective medical
23 evidence of an impairment related to Plaintiff's wrist, hand, or neck that could
24 reasonably produce the subjective symptoms alleged by Plaintiff (id. at 33). As
25 discussed below, these factors provide additional clear and convincing reasons for
26 rejecting Plaintiff's credibility.

27 As discussed above (see Discussion supra § III.B), the evidence did not
28 support a finding that Plaintiff suffered from a disabling cardiac or gastric

1 condition. Neither does the record support a disabling psychiatric condition, as
2 the record only makes passing references to depression and the administration of
3 Prozac. (Id. at 135, 138, 195, 336, 355, 356-57.) Similarly, there are no records
4 suggesting that Plaintiff suffered from an ongoing problem with stress or
5 headaches. On August 4, 2005, Plaintiff made a subjective complaint of “frequent
6 pain-related headaches.” (Id. at 323.) However, less than five months prior,
7 Plaintiff reported that she did not suffer from frequent headaches. (Id. at 336.)
8 Plaintiff also mentioned experiencing stress only in passing. (Id. at 138.) In
9 addition, despite Plaintiff’s complaints of hand, wrist, and neck impairments, there
10 is no objective evidence to support any type of limitations in this regard. In fact,
11 January 2007 x-rays of Plaintiff’s cervical spine, hand, and wrist were normal.
12 (Id. at 361-62.) Again, the lack of objective medical evidence to support
13 Plaintiff’s complaints of impairment was a clear and convincing reason to reject
14 her credibility. Burch, 400 F.3d at 680-81 (ALJ may properly rely on
15 inconsistency between claimant’s subjective complaints and objective medical
16 findings); Morgan, 169 F.3d at 600 (ALJ may properly rely on conflict between
17 claimant’s testimony of subjective complaints and objective medical evidence in
18 the record).

19 Finally, to the extent that Plaintiff has been treated for any physical
20 conditions, she has maintained a conservative medication history. Plaintiff has
21 obtained relief mostly through the use of ibuprofen and Flexeril, and was only
22 prescribed narcotic pain medication immediately following her knee surgery. (Id.
23 at 177, 182, 186, 193, 243, 305, 356, 358, 359, 361, 363, 364, 367, 369, 370-71,
24 373, 376, 378, 380, 382, 383, 386-87, 389-90, 392, 394, 396, 399, 402, 404, 415,
25 417, 418, 424-26, 529.) This too was a clear and convincing reason for rejecting
26 Plaintiff’s credibility. Johnson, 60 F.3d at 1434 (ALJ may properly rely on the
27 fact that only conservative treatment had been prescribed).

28 Ultimately, the lack of objective medical evidence supporting Plaintiff’s

1 alleged impairments, her conservative treatment, her noncompliance with
2 suggested treatment, and her significant activities of daily living amounted to clear
3 and convincing reasons for rejecting her credibility. Burch, 400 F.3d at 680-81
4 (ALJ may properly rely on inconsistency between claimant’s subjective
5 complaints and objective medical findings); Morgan, 169 F.3d at 600 (ALJ may
6 properly rely on conflict between claimant’s testimony of subjective complaints
7 and objective medical evidence in the record); Tidwell, 161 F.3d at 602 (ALJ may
8 properly rely on weak objective support, lack of treatment, daily activities
9 inconsistent with total disability, and helpful medication).

10 Based on the foregoing, the Court finds the ALJ’s credibility finding was
11 supported by substantial evidence and was sufficiently specific to permit the Court
12 to conclude that the ALJ did not arbitrarily discredit Plaintiff’s subjective
13 testimony. Thus, there was no error.

14 **D. The ALJ Properly Considered the Lay Witness Testimony.**

15 Plaintiff claims that the ALJ failed to properly consider the testimony of her
16 husband, Jose Figueroa. (JS at 22-23, 25-27.) The Court does not agree.

17 Mr. Figueroa testified that Plaintiff is “very injured.” (AR at 581.)
18 Specifically, Mr. Figueroa testified that Plaintiff suffers from numbness in her
19 hands, pain in her neck and back, swelling in her hands and arms, and difficulty
20 sleeping. (Id. at 581-82.) According to Mr. Figueroa, Plaintiff cannot sit long and
21 has trouble walking. (Id. at 583.) Mr. Figueroa has to assist Plaintiff with the
22 shopping. (Id.) The ALJ rejected Mr. Figueroa’s testimony, finding:

23 At the hearing, the claimant and her husband alleged an inability to
24 perform most daily activities with the husband having to assume all
25 of the household chores (hearing testimony). However, the objective
26 medical record does not show findings, which would support the
27 degree of limitation alleged.

28 (Id. at 33.)

1 Title 20 C.F.R. §§ 404.1513(d) and 416.913(d) provides that, in addition to
2 medical evidence, the Commissioner “may also use evidence from other sources to
3 show the severity of [an individual’s] impairment(s) and how it affects [her]
4 ability to work,” and the Ninth Circuit has repeatedly held that “[d]escriptions by
5 friends and family members in a position to observe a claimant’s symptoms and
6 daily activities have routinely been treated as competent evidence.” Sprague v.
7 Bowen, 812 F.2d 1226, 1232 (9th Cir. 1987). If the ALJ chooses to reject such
8 evidence from “other sources,” he may not do so without comment. Nguyen v.
9 Chater, 100 F.3d 1462, 1467 (9th Cir. 1996). The ALJ must provide “reasons that
10 are germane to each witness.” Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir.
11 1993). One of the reasons deemed to be “germane” to a particular witness
12 includes that the witness’s testimony is contradicted by the medical evidence of
13 record. See Bayliss, 427 F. 3d at 1218; Lewis v. Apfel, 236 F.3d 503, 511 (9th
14 Cir. 2001) (“One reason for which an ALJ may discount lay testimony is that it
15 conflicts with medical evidence”); Vincent ex rel. Vincent v. Heckler, 739 F.2d
16 1393, 1395 (9th Cir. 1984) (“The ALJ properly discounted lay testimony that
17 conflicted with the available medical evidence.”).

18 Here, the ALJ acknowledged Mr. Figueroa’s testimony and rejected it on
19 the basis of reasons that were germane to the witness. The Court does not
20 consider the persuasiveness of the ALJ’s reasons for rejecting Mr. Figueroa’s
21 testimony. Thus, the ALJ fulfilled his duty to consider the evidence and provided
22 sufficient reason for rejecting the third party evidence of Mr. Figueroa.

23 **E. The ALJ Did Not Err by Failing to Consider Plaintiff’s Combined**
24 **Impairments in Making an RFC Determination.**

25 Plaintiff contends that the ALJ failed to consider all of Plaintiff’s combined
26 impairments in determining her RFC. Specifically, Plaintiff contends that the ALJ
27 failed to consider Plaintiff’s nonexertional limitations stemming from her alleged
28 cardiac, gastric, and thyroid conditions, and the effect of Plaintiff’s pain on her

1 concentration, persistence, and pace. (JS at 27-29.)

2 A claimant's "residual functional capacity" is the most a claimant can still
3 do despite her limitations. Smolen, 80 F.3d at 1291 (citing 20 C.F.R. §
4 404.1545(a)). An ALJ will assess a claimant's RFC based on all the relevant
5 evidence of record and will consider all of the claimant's medically determinable
6 impairments, whether found to be severe or not. 20 C.F.R. § 404.1545(a)(2), (3),
7 (e).

8 As stated above (see Discussion supra § III.B), the record does not support a
9 finding that Plaintiff suffers from a cardiac or gastric condition that would result
10 in significant nonexertional limitations. Neither does the record establish any
11 nonexertional limitations related to a thyroid condition, as the record merely
12 reflects that Plaintiff was diagnosed with hypothyroidism and was placed on
13 medications. (AR at 305, 356, 359, 361, 373, 375, 377, 389, 396, 418, 420-22,
14 433, 529, 537.) Also, there are only two notations in the record that could be
15 construed as complaints by Plaintiff that her pain has impaired her concentration,
16 persistence, or pace. Significantly, these two complaints appear in the same
17 Written Questions to Claimant (Adult) questionnaire. (Id. at 135, 138.) Plaintiff
18 never complained of impaired concentration, persistence, and pace to any medical
19 source, and no such source ever reported an independent finding that Plaintiff was
20 so limited.

21 While the ALJ was required to consider all of Plaintiff's medically
22 determined impairments in assessing her RFC, the record does not contain any
23 support for a finding that Plaintiff suffered any limitations related to a cardiac,
24 gastric, or thyroid condition, and did not support a finding that Plaintiff had
25 impaired concentration, persistence, or pace. Accordingly, the ALJ did not err in
26 failing to include these alleged but unproven limitations in his RFC assessment,
27 particularly where Plaintiff's subjective complaints of impairment had been
28 properly rejected by the ALJ.

1 **F. The ALJ Did Not Err by Relying on the VE's Testimony.**

2 Plaintiff contends that as a result of failing to consider Plaintiff's combined
3 impairments in determining her RFC, as addressed above (see Discussion supra §
4 III.E), the ALJ failed to present all of Plaintiff's limitations to the VE. However,
5 as the Court determined that the ALJ did not fail to consider Plaintiff's combined
6 impairments, Plaintiff's related claim regarding the questioning of the VE
7 necessarily fails.

8 **IV.**

9 **ORDER**

10 Based on the foregoing, IT THEREFORE IS ORDERED that Judgment be
11 entered affirming the decision of the Commissioner, and dismissing this action
12 with prejudice.

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14 Dated: May 2, 2013



15 **HONORABLE OSWALD PARADA**
16 United States Magistrate Judge
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