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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

MICHELLE HILL,)	No. EDCV 09-769 CW
)	
Plaintiff,)	DECISION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner, Social)	
Security Administration,)	
)	
Defendant.)	
_____)	

The parties have consented, under 28 U.S.C. § 636(c), to the jurisdiction of the undersigned Magistrate Judge. Plaintiff seeks review of the Commissioner’s denial of disability benefits. As discussed below, the court finds that the Commissioner’s decision should be reversed and this matter remanded for further proceedings.

I. BACKGROUND

Plaintiff Michelle Hill was born on April 22, 1971, and was thirty-seven years old at the time of her administrative hearing. [Administrative Record (“AR”) 16, 19.] She has a limited education (tenth grade) and past relevant work experience as a sales attendant

1 and retail sales person. [AR 16, 47, 123.] Plaintiff alleges
2 disability on the basis of depression, bipolar disorder, anxiety
3 attacks, short-term memory problems, difficulty concentrating,
4 feelings of sadness, inability to drive due to phobias, lack of
5 motivation, and plantar fasciitis. [AR 13.]

6 **II. PROCEEDINGS IN THIS COURT**

7 Plaintiff's complaint was lodged on April 17, 2009, and filed on
8 April 24, 2009. On September 29, 2009, Defendant filed an answer and
9 Plaintiff's Administrative Record ("AR"). On November 17, 2009, the
10 parties filed their Joint Stipulation ("JS") identifying matters not
11 in dispute, issues in dispute, the positions of the parties, and the
12 relief sought by each party. This matter has been taken under
13 submission without oral argument.

14 **III. PRIOR ADMINISTRATIVE PROCEEDINGS**

15 Plaintiff applied for a period of disability and disability
16 insurance benefits ("DIB") under Title II of the Social Security Act
17 and supplemental security income ("SSI") under Title XVI on December
18 22, 2006, alleging disability since September 27, 2005. [AR 9.]
19 Plaintiff is insured for DIB purposes until September 30, 2010. [Id.]
20 After the applications were denied initially and on reconsideration,
21 Plaintiff requested an administrative hearing, which was held on
22 December 18, 2008, before Administrative Law Judge ("ALJ") David M.
23 Ganly. [AR 19-51.] Plaintiff appeared without counsel¹, and testimony
24

25 ¹ The ALJ informed Plaintiff that the record indicated that
26 written notices had been sent to Plaintiff prior to the hearing
27 advising her of the right to representation. [AR 21.] The ALJ asked
28 Plaintiff whether it was correct to assume that Plaintiff was aware of
her right to representation but chose not to retain an attorney, and
Plaintiff responded yes. [AR 21-22.] The hearing proceeded. [AR 22-
51.]

1 was taken from Plaintiff, medical expert Joseph Malancharuvil and
2 vocational expert Stephen Berry. [AR 19.] The ALJ denied benefits in
3 a decision issued on January 15, 2009. [AR 9-18.] When the Appeals
4 Council denied review on March 25, 2009, the ALJ's decision became the
5 Commissioner's final decision. [AR 1-3.]

6 **IV. STANDARD OF REVIEW**

7 Under 42 U.S.C. § 405(g), a district court may review the
8 Commissioner's decision to deny benefits. The Commissioner's (or
9 ALJ's) findings and decision should be upheld if they are free of
10 legal error and supported by substantial evidence. However, if the
11 court determines that a finding is based on legal error or is not
12 supported by substantial evidence in the record, the court may reject
13 the finding and set aside the decision to deny benefits. See Aukland
14 v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Tonapetyan v.
15 Halter, 242 F.3d 1144, 1147 (9th Cir. 2001); Osenbrock v. Apfel, 240
16 F.3d 1157, 1162 (9th Cir. 2001); Tackett v. Apfel, 180 F.3d 1094,
17 1097 (9th Cir. 1999); Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
18 1998); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); Moncada
19 v. Chater, 60 F.3d 521, 523 (9th Cir. 1995)(per curiam).

20 "Substantial evidence is more than a scintilla, but less than a
21 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
22 which a reasonable person might accept as adequate to support a
23 conclusion." Id. To determine whether substantial evidence supports
24 a finding, a court must review the administrative record as a whole,
25 "weighing both the evidence that supports and the evidence that
26 detracts from the Commissioner's conclusion." Id. "If the evidence
27 can reasonably support either affirming or reversing," the reviewing
28 court "may not substitute its judgment" for that of the Commissioner.

1 Reddick, 157 F.3d at 720-721; see also Osenbrock, 240 F.3d at 1162.

2 **V. DISCUSSION**

3 **A. THE FIVE-STEP EVALUATION**

4 To be eligible for disability benefits a claimant must
5 demonstrate a medically determinable impairment which prevents the
6 claimant from engaging in substantial gainful activity and which is
7 expected to result in death or to last for a continuous period of at
8 least twelve months. Tackett, 180 F.3d at 1098; Reddick, 157 F.3d at
9 721; 42 U.S.C. § 423(d)(1)(A).

10 Disability claims are evaluated using a five-step test:

11 Step one: Is the claimant engaging in substantial
12 gainful activity? If so, the claimant is found not
13 disabled. If not, proceed to step two.

14 Step two: Does the claimant have a "severe" impairment?
15 If so, proceed to step three. If not, then a finding of not
16 disabled is appropriate.

17 Step three: Does the claimant's impairment or
18 combination of impairments meet or equal an impairment
19 listed in 20 C.F.R., Part 404, Subpart P, Appendix 1? If
20 so, the claimant is automatically determined disabled. If
21 not, proceed to step four.

22 Step four: Is the claimant capable of performing his
23 past work? If so, the claimant is not disabled. If not,
24 proceed to step five.

25 Step five: Does the claimant have the residual
26 functional capacity to perform any other work? If so, the
27 claimant is not disabled. If not, the claimant is disabled.

28 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995, as amended
April 9, 1996); see also Bowen v. Yuckert, 482 U.S. 137, 140-142, 107
S. Ct. 2287, 96 L. Ed. 2d 119 (1987); Tackett, 180 F.3d at 1098-99; 20
C.F.R. § 404.1520, § 416.920. If a claimant is found "disabled" or
"not disabled" at any step, there is no need to complete further
steps. Tackett, 180 F.3d 1098; 20 C.F.R. § 404.1520.

Claimants have the burden of proof at steps one through four,
subject to the presumption that Social Security hearings are non-

1 adversarial, and to the Commissioner's affirmative duty to assist
2 claimants in fully developing the record even if they are represented
3 by counsel. Tackett, 180 F.3d at 1098 and n.3; Smolen, 80 F.3d at
4 1288. If this burden is met, a prima facie case of disability is
5 made, and the burden shifts to the Commissioner (at step five) to
6 prove that, considering residual functional capacity ("RFC")², age,
7 education, and work experience, a claimant can perform other work
8 which is available in significant numbers. Tackett, 180 F.3d at 1098,
9 1100; Reddick, 157 F.3d at 721; 20 C.F.R. § 404.1520, § 416.920.

10 **B. THE ALJ'S EVALUATION IN PLAINTIFF'S CASE**

11 Here, the ALJ found that Plaintiff had not engaged in substantial
12 gainful activity since her alleged disability onset date (step one);
13 that Plaintiff had "severe" impairments, namely a depressive disorder
14 not otherwise specified, mild, an anxiety disorder not otherwise
15 specified and probably situational, a personality disorder with
16 avoidant features, and plantar fasciitis (step two); and that
17 Plaintiff did not have an impairment or combination of impairments
18 that met or equaled a "listing" (step three). [AR 11-12.] The ALJ
19 determined that Plaintiff had an RFC for light work with a restriction
20 to standing and/or walking for four hours in an eight-hour period and
21 to moderately complex tasks with four to five steps, with the
22 provision that Plaintiff cannot be in charge of the safety of others

23
24 ² Residual functional capacity measures what a claimant can
25 still do despite existing "exertional" (strength-related) and
26 "nonexertional" limitations. Cooper v. Sullivan, 880 F.2d 1152, 1155
27 n.s. 5-6 (9th Cir. 1989). Nonexertional limitations limit ability to
28 work without directly limiting strength, and include mental, sensory,
postural, manipulative, and environmental limitations. Penny v.
Sullivan, 2 F.3d 953, 958 (9th Cir. 1993); Cooper, 800 F.2d at 1155
n.7; 20 C.F.R. § 404.1569a(c). Pain may be either an exertional or a
nonexertional limitation. Penny, 2 F.3d at 959; Perminster v. Heckler,
765 F.2d 870, 872 (9th Cir. 1985); 20 C.F.R. § 404.1569a(c).

1 or work with dangerous, moving machinery. [AR 13.] Plaintiff was
2 unable to perform her past relevant work (step four). [AR 16.] The
3 vocational expert testified that a person with Plaintiff's RFC could
4 perform work existing in significant numbers, such as information
5 clerk, final inspector and cashier II (step five). [AR 17.]
6 Accordingly, Plaintiff was found not "disabled" as defined by the
7 Social Security Act. [AR 17.]

8 **C. ISSUES IN DISPUTE**

9 The parties' Joint Stipulation identifies the following three
10 disputed issues:

- 11 1. Whether the ALJ properly considered the opinion of a
12 consultative examining physician regarding Plaintiff's
13 bipolar disorder and Global Assessment of Functioning
14 ("GAF") score of 45;
- 15 2. Whether the ALJ properly considered Plaintiff's medication
16 side effects; and
- 17 3. Whether the ALJ properly considered the lay witness
18 statements.

19 [JS 2.]

20 As discussed below, Issue One mandates reversal of the
21 Commissioner's decision. Issues Two and Three are without merit.

22 **D. ISSUE ONE: DR. ZIMMERMAN**

23 **Background**

24 In the first claim, Plaintiff asserts that the ALJ did not
25 properly consider the medical evidence, particularly the opinion of
26 Dr. Emery Zimmerman, who examined Plaintiff on August 14, 2006, at the
27 CHARLEE Family Care clinic in Riverside County for an "Assessment/Care
28 Plan: INITIAL." [JS 3-4; AR 181-82.] During the assessment, Dr.

1 Zimmerman gave a diagnosis of Bipolar Disorder I, Depressed, Severe;
2 and Panic Disorder without Agoraphobia; and a GAF score of 45.³ [AR
3 181.] In the comments section, Dr. Zimmerman wrote:

4 Client suffering from severe depression and anxiety. She is
5 having panic attacks. She had to quit her job of 9 years [due]
6 to symptoms. Client crying and sleepless, constantly worrying.
7 She's also paranoid and fearful. She [has] 3 children, is
8 separate from her husband. She's a domestic violence and child
9 sexual abuse victim.

10 [Id.]

11 The next day, on August 15, 2006, a therapist at the CHARLEE
12 facility approved Plaintiff for monthly psychiatric evaluations with
13 medication monitoring and weekly therapy sessions for a six-month
14 period. [AR 183.] The stated goal of the treatment was to decrease
15 Plaintiff's depressive moods and anxiety from a daily to weekly
16 occurrence within six months. [Id.]

17 On September 25, 2006, Dr. Zimmerman completed a Psychiatric
18 Assessment/Evaluation stating a diagnosis of Bipolar Disorder I,
19 depressed; and panic disorder without agoraphobia (post-traumatic
20 stress disorder ("PTSD")). [AR 184.] In the comments section, Dr.
21 Zimmerman wrote, in part, that Plaintiff is "probably encountering
22 PTSD [due to] early abuse . . . and needs therapy desperately." [Id.]

24 ³ A GAF score reflects a clinician's subjective rating, on a
25 scale of 0 to 100, of the more severe of two components: the severity
26 of a patient's psychological symptoms, or the psychological, social,
27 and occupational functioning of a patient. A GAF score of 41 through
28 50 signifies serious symptoms, such as suicidal ideation or severe
obsessional rituals, or any serious impairment in social,
occupational, or school functioning, such as the absence of friends or
the inability to keep a job. See generally Diagnostic and Statistical
Manual of Mental Disorders, Fourth Edition ("DSM-IV").

1 At the administrative hearing of December 12, 2008, Plaintiff
2 testified that she received counseling with a therapist through county
3 services, that the sessions were scheduled for every two weeks, that
4 she had not seen the therapist for approximately one month, and that
5 she was waiting for a referral to resume the sessions. [AR 24, 26.]
6 The current record does not contain any notes of Plaintiff's ongoing
7 treatment or therapy after September 2006, as referenced by Dr.
8 Zimmerman, the initial CHARLEE notes, and Plaintiff's testimony.

9 On May 8, 2007, Plaintiff had a Complete Psychiatric Evaluation
10 performed by Dr. Romualdo R. Rodriguez. [AR 185-91.] There were no
11 psychiatric records for Dr. Rodriguez to review, but after reviewing
12 Plaintiff's history and conducting a mental status exam, Dr. Rodriguez
13 gave a diagnosis of PTSD, a learning disorder not otherwise specified,
14 and a GAF score of 65.⁴ [AR 185-90.] In the prognosis section of the
15 opinion, Dr. Rodriguez stated that, "From a psychiatric standpoint, as
16 long as this claimant is properly treated for her PTSD she will be
17 able to recover within the next 12 months." [AR 190.] In the
18 functional assessment section, Dr. Rodriguez stated, among other
19 things, that Plaintiff was able to understand, remember and carry out
20 simple one or two-step job instructions, perform detailed and complex
21 instructions, and was slightly limited in all listed areas of mental
22 functioning, such as the ability to relate to supervisors, co-workers
23 and the public. [AR 191.]

24 At the administrative hearing of December 18, 2008, Dr.

25
26 ⁴ A GAF score in the range of 61 through 70 denotes some mild
27 symptoms, such as depressed mood or mild insomnia, or some difficulty
28 in social, occupational, or school functioning, such as occasional
truancy or theft within the household, but indicates that the subject
is generally functioning "pretty well" and has some meaningful
interpersonal relationships.

1 Malancharuvil, the medical expert, testified that based on his review
2 of the available records, Plaintiff had an anxiety disorder not
3 otherwise specified, personality difficulties with avoidance features,
4 and mild depression. [AR 28.] Based on the record, Plaintiff was
5 capable of performing moderately complex tasks up to four to five-step
6 instructions but should avoid safety operations or hazardous
7 machinery. [AR 28.] Dr. Malancharuvil further testified that
8 Plaintiff was on a "maintenance course" of treatment, that "she's
9 maintaining with the regimen," and that her anxiety appeared to be
10 "situational." [AR 30.] Dr. Malancharuvil also testified that based
11 on the record, "there is no suggestion that she has not improved,"
12 that her activities were normal, and that there was no evidence of
13 hospitalization or an increase in treatment. [AR 34.] Dr.
14 Malancharuvil then discussed the opinion of Dr. Rodriguez, noting that
15 it demonstrated that Plaintiff did not meet the requirements of
16 establishing disability at the time of the examination, and testified
17 that the medical record did not support Dr. Zimmerman's diagnosis of
18 bipolar disorder. [AR 34-35.]

19 **The Commissioner's Decision**

20 In the administrative decision, the ALJ noted Dr. Zimmerman's
21 initial opinion, the recommendation for individual therapy, and the
22 treatment note of September 25, 2006. [AR 14-15.] The ALJ stated that
23 based on the treating records, Plaintiff "was noted to have no grave
24 disability" and that she "received only routine outpatient treatment,
25 and the records do not reflect any acute mental health crisis
26 requiring inpatient hospitalization or intensive treatment." [AR 15.]
27 The ALJ then discussed Dr. Rodriguez's opinion and conclusions in
28 detail, as well as the testimony of Dr. Malancharuvil. [Id.] The ALJ

1 concluded that, "I give more weight to the medical expert's testimony
2 and opinion, since the medical expert had an opportunity to review the
3 entire record as developed," and credited Dr. Malancharuvil's opinion
4 regarding Plaintiff's functional capacity. [AR 16.]

5 **Discussion**

6 The ALJ has a "special duty to fully and fairly develop the
7 record and to assure that the claimant's interests are considered
8 . . . even when the claimant is represented by counsel." Celaya v.
9 Halter, 332 F.3d 1177, 1183 (9th Cir. 2003)(ellipsis in original)
10 (quoting Brown v. Heckler, 713 F.2d 441, 443 (9th Cir.1983); Smolen v.
11 Chater, 80 F.3d 1273, 1288 (9th Cir. 1996); see also Widmark v.
12 Barnhart, 454 F.3d 1063, 1069 (9th Cir. 2006)(ALJ has a duty to
13 develop the record where there is a "gap" in the medical evidence).
14 When a claimant is not represented by counsel, this responsibility is
15 heightened: the ALJ's duty is "'to scrupulously and conscientiously
16 probe into, inquire of, and explore for all the relevant facts. He
17 must be especially diligent in ensuring that favorable as well as
18 unfavorable facts and circumstances are elicited.'" Higbee v.
19 Sullivan, 975 F.2d 558, 561 (9th Cir. 1992)(quoting Cox v. Califano,
20 587 F.2d 988, 991 (9th Cir. 1978)). "When 'the heavy burden imposed
21 by Cox' is not met, and the claimant may have been prejudiced, 'the
22 interests of justice demand that the case be remanded.'" Higbee v.
23 Sullivan, 975 F.2d at 561 (citing Vidal v. Harris, 637 F.2d 710,
24 714-715 (9th Cir. 1981)); see also Widmark v. Barnhart, 454 F.3d at
25 1069; Celaya v. Halter, 332 F.3d 1177, 1183 (9th Cir. 2003).

26 Here, the record is not adequately developed to evaluate whether
27 substantial evidence supports the Commissioner's interpretation of the
28 medical opinion evidence and the determination to adopt the medical

1 expert's opinion while not adopting the treating physician's opinion.
2 The record contains almost no treating medical evidence or therapy
3 notes, despite clear indications elsewhere in the record - such as Dr.
4 Zimmerman's initial evaluations, the CHARLEE referral, and Plaintiff's
5 testimony - that Plaintiff underwent therapy and treatment on at least
6 a semi-regular basis. Accordingly, the court cannot properly evaluate
7 the opinion of the medical expert, which was adopted by the
8 Commissioner, that Plaintiff was on a "maintenance course" of
9 treatment and that "she's maintaining with the regimen." Under these
10 circumstances, particularly the heightened responsibility to
11 scrupulously develop the record in light of the fact that Plaintiff
12 was unrepresented at the hearing and clear indications of a
13 significant gap in the record that may be prejudicial, remand for
14 further proceedings is appropriate. Higbee v. Sullivan, 975 F.2d at
15 561.

16 **E. ISSUE TWO: MEDICATION SIDE EFFECTS**

17 In the second claim, Plaintiff argues that the ALJ did not make
18 specific findings as to her allegation of medication side effects. [JS
19 7-8.] As part of her disability application, Plaintiff reported that
20 her medications were Celexa, Ibuprofen, Klonopin and Vicodin. [AR
21 155.] Plaintiff reported that the Klonopin resulted in memory loss
22 and that the Vicodin resulted in nausea. [Id.] At the hearing,
23 Plaintiff testified that her medications were Seroquel, Celexa and
24 Klonopin. [AR 24.] Jayne Campbell, a third party witness, testified
25 later at the hearing that Plaintiff gets sleepy from the medication
26 and "can't function" and needs to nap. [AR 41.] In the administrative
27 decision, the ALJ rejected the proposition that Plaintiff's medication
28 side effects presented significant functional limitations, stating

1 that, "Although the claimant alleged that her medications make her
2 sleepy, no side effects are objectively documented or corroborated.
3 There is no evidence that the doctor substituted medications in an
4 attempt to produce less symptomatology or relieve side effects." [AR
5 14.]

6 Contrary to Plaintiff's assertion, the ALJ did make specific
7 findings as to the claim of medication side effects, and they were
8 supported by the record. There was no documentation of the side
9 effects alleged by Plaintiff; moreover, a treatment note by Dr.
10 Zimmerman indicated that there were no reported side effects. [AR
11 184.] Neither was there evidence that Plaintiff's medications were
12 adjusted in response to side effects; for example, the record
13 indicates that Plaintiff was still taking Klonopin from the time of
14 her application filing to the date of the hearing. Moreover, the ALJ
15 found that Plaintiff's subjective symptom statements and other
16 testimony were not entirely credible, which Plaintiff does not contest
17 as an issue in the present action, and Plaintiff's challenge to the
18 ALJ's finding that Ms. Campbell's testimony was not entirely credible
19 is without merit, as discussed below. Accordingly, this issue does
20 not warrant reversal of the ALJ's decision.

21 **F. ISSUE THREE: LAY TESTIMONY AND STATEMENTS**

22 In the final claim, Plaintiff asserts that the ALJ did not
23 properly consider the written statements and hearing testimony of
24 Jayne Campbell, Plaintiff's friend. [JS 9-11.] On February 2, 2007,
25 Ms. Campbell completed a "Function Report - Adult - Third Party"
26 describing Plaintiff's daily activities and other functions. [AR 133-
27 40.] Ms. Campbell wrote that she has known Plaintiff for nine years
28 and that she sees Plaintiff fifteen hours per week for bible study.

1 [AR 133.] Ms. Campbell also wrote, among other things, that
2 Plaintiff's anxiety makes it difficult to sleep, that driving is too
3 stressful for Plaintiff, that Plaintiff has problems with memory,
4 concentration, and focusing on instructions, and that Plaintiff does
5 not handle stress or changes in routine well. [AR 134, 136, 138, 139.]
6 At the hearing on December 18, 2008, Ms. Campbell testified that she
7 sees Plaintiff three times a week for bible meetings and gives
8 Plaintiff rides to the grocery store and doctor's appointments. [AR
9 40.] Ms. Campbell also testified that Plaintiff has anxiety and
10 depression, that Plaintiff's medications cause sleepiness so that
11 Plaintiff "can't function" and needs to nap, that Plaintiff withdraws
12 and "can't deal with people," and that Plaintiff had physical problems
13 such as plantar fasciitis. [AR 41-42.]

14 In the administrative decision, the ALJ stated that, after
15 reading and considering Ms. Campbell's statements, he found that
16 "these statements are only credible to the extent that the claimant
17 can do the work described by the vocational expert." [AR 14.] The ALJ
18 noted that Plaintiff's daily activities included cleaning, cooking,
19 laundry, shopping, and taking care of her children. [Id.] The ALJ
20 stated that Ms. Campbell's statements regarding Plaintiff's impaired
21 memory and other limitations "may be true," but that the medical
22 opinions in the record did not support a disabling level of impaired
23 functioning. [Id.] The ALJ noted that Ms. Campbell "is not a medical
24 professional" and was "not competent to make a diagnosis or argue the
25 severity of the claimant's symptoms in relationship to her ability to
26 work." [Id.] Finally, the ALJ noted that third party evidence "do not
27 overcome the medical evidence" and that "it has not yet come to a
28 point at which untrained, medically unqualified relatives can have

1 their kindly attempts to help the claimant overcome the opinions of
2 medically trained personnel." [AR 14.] Plaintiff contends that the
3 ALJ's evaluation "failed to properly consider" Ms. Campbell's
4 statements and revealed "a highly troubling and fundamentally unfair
5 judicial bias toward lay witness statements." [JS 10.]

6 The testimony of lay witnesses about their own observations
7 regarding the claimant's impairments constitutes competent evidence
8 that must be taken into account and evaluated by the Commissioner in
9 the disability evaluation. Robbins v. Soc. Sec. Admin., 466 F.3d 880,
10 885 (9th Cir. 2006); Stout v. Commissioner, Social Sec. Admin., 454
11 F.3d 1050, 1053 (9th Cir. 2006). Such testimony cannot be discounted
12 unless the ALJ gives reasons that are germane to that witness.
13 Carmickle v. Commissioner, Social Sec. Admin., 533 F.3d 1155, 1164
14 (9th Cir. 2008); Stout v. Commissioner, 454 F.3d at 1053 (citing
15 Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir. 1993)); Bayliss v.
16 Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005); Lewis v. Apfel, 236
17 F.3d 503, 511 (9th Cir. 2001). "Inconsistency with medical evidence
18 is one such reason." Bayliss v. Barnhart, 427 F.3d at 1218 (citing
19 Lewis v. Apfel, 236 F.3d at 511). In this case, the ALJ's detailed
20 evaluation of Ms. Campbell's statements satisfied this standard. The
21 ALJ accepted statements by Ms. Campbell that were consistent with
22 evidence of Plaintiff's activities and objective medical evidence, but
23 rejected the portions of her statements that did not meet this
24 standard. The ALJ's rejection of those statements was supported by
25 substantial evidence and was not erroneous. See Bayliss v. Barnhart,
26 427 F.3d at 1218 (upholding rejection of lay witness testimony that
27 was inconsistent with Plaintiff's activities and objective evidence in
28 the record). Accordingly, this claim is without merit.

