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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CATALINA GONTES,)	Case No. EDCV 12-0141-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	AFFIRMING THE COMMISSIONER
)	
MICHAEL J. ASTRUE,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying her application for Social Security Supplemental Security Income ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed October 15, 2012, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is affirmed and this action is dismissed.

II. BACKGROUND

Plaintiff was born on April 30, 1967. (Administrative

1 Record ("AR") 80.) She has a seventh-grade education and is able
2 to communicate in English. (AR 90, 97.) Plaintiff has not
3 worked since 1991, although she earned a small amount of income
4 in 1993. (AR 85, 91.) On June 29, 2007, Plaintiff filed an
5 application for SSI, alleging a disability onset date of June 1,
6 1998. (AR 80.) The application was denied on September 27,
7 2007. (AR 36-38.) Plaintiff filed a request for
8 reconsideration, which was denied on September 9, 2008. (AR 41-
9 45.)

10 After Plaintiff's application was denied, she requested a
11 hearing before an Administrative Law Judge ("ALJ"). (AR 48.) An
12 initial hearing was held on May 6, 2010, at which Plaintiff, who
13 was represented by counsel, appeared and testified on her own
14 behalf. (AR 479-508.) In a written decision issued on June 7,
15 2010, the ALJ determined that Plaintiff was not disabled. (AR
16 22-33.) Plaintiff then requested review of the ALJ's decision,
17 and on October 29, 2010, the Appeals Council reversed and
18 remanded the matter for further proceedings. (AR 65-67.) On
19 June 7, 2011, another hearing was held, at which Plaintiff again
20 testified on her own behalf. (AR 455-78.) On June 17, 2011, the
21 ALJ issued a written decision again determining that Plaintiff
22 was not disabled. (AR 12-21.) Plaintiff requested review of the
23 ALJ's decision. (AR 11.) On December 2, 2011, the Appeals
24 Council denied Plaintiff's request for review. (AR 5-7.) This
25 action followed.

26 **III. STANDARD OF REVIEW**

27 Pursuant to 42 U.S.C. § 405(g), a district court may review
28 the Commissioner's decision to deny benefits. The ALJ's findings

1 and decision should be upheld if they are free of legal error and
2 are supported by substantial evidence based on the record as a
3 whole. § 405(g); Richardson v. Perales, 402 U.S. 389, 401, 91 S.
4 Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue, 481
5 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such
6 evidence as a reasonable person might accept as adequate to
7 support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter
8 v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than
9 a scintilla but less than a preponderance. Lingenfelter, 504
10 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880,
11 882 (9th Cir. 2006)). To determine whether substantial evidence
12 supports a finding, the reviewing court "must review the
13 administrative record as a whole, weighing both the evidence that
14 supports and the evidence that detracts from the Commissioner's
15 conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir.
16 1996). "If the evidence can reasonably support either affirming
17 or reversing," the reviewing court "may not substitute its
18 judgment" for that of the Commissioner. Id. at 720-21.

19 **IV. THE EVALUATION OF DISABILITY**

20 People are "disabled" for purposes of receiving Social
21 Security benefits if they are unable to engage in any substantial
22 gainful activity owing to a physical or mental impairment that is
23 expected to result in death or which has lasted, or is expected
24 to last, for a continuous period of at least 12 months. 42
25 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
26 (9th Cir. 1992).

27 A. The Five-Step Evaluation Process

28 The ALJ follows a five-step sequential evaluation process in

1 assessing whether a claimant is disabled. 20 C.F.R.
2 § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir.
3 1995) (as amended Apr. 9, 1996). In the first step, the
4 Commissioner must determine whether the claimant is currently
5 engaged in substantial gainful activity; if so, the claimant is
6 not disabled and the claim must be denied. § 416.920(a)(4)(i).
7 If the claimant is not engaged in substantial gainful activity,
8 the second step requires the Commissioner to determine whether
9 the claimant has a "severe" impairment or combination of
10 impairments significantly limiting his ability to do basic work
11 activities; if not, a finding of not disabled is made and the
12 claim must be denied. § 416.920(a)(4)(ii). If the claimant has
13 a "severe" impairment or combination of impairments, the third
14 step requires the Commissioner to determine whether the
15 impairment or combination of impairments meets or equals an
16 impairment in the Listing of Impairments ("Listing") set forth at
17 20 C.F.R., Part 404, Subpart P, Appendix 1; if so, disability is
18 conclusively presumed and benefits are awarded.
19 § 416.920(a)(4)(iii). If the claimant's impairment or
20 combination of impairments does not meet or equal an impairment
21 in the Listing, the fourth step requires the Commissioner to
22 determine whether the claimant has sufficient residual functional
23 capacity ("RFC")¹ to perform his past work; if so, the claimant
24 is not disabled and the claim must be denied.
25 § 416.920(a)(4)(iv). The claimant has the burden of proving that

27 ¹RFC is what a claimant can still do despite existing
28 exertional and nonexertional limitations. 20 C.F.R. § 416.945;
see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 he is unable to perform past relevant work. Drouin, 966 F.2d at
2 1257. If the claimant meets that burden, a prima facie case of
3 disability is established. Id. If that happens or if the
4 claimant has no past relevant work, the Commissioner then bears
5 the burden of establishing that the claimant is not disabled
6 because he can perform other substantial gainful work available
7 in the national economy. § 416.920(a)(4)(v). That determination
8 comprises the fifth and final step in the sequential analysis.
9 § 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

10 B. The ALJ's Application of the Five-Step Process

11 At step one, the ALJ found that Plaintiff had not engaged in
12 any substantial gainful activity since June 29, 2007, the date of
13 her SSI application. (AR 17.) At step two, the ALJ concluded
14 that Plaintiff had the severe impairments of "obesity,
15 degenerative disc disease of the neck and back, bilateral carpal
16 tunnel syndrome, status post left carpal tunnel surgical release,
17 history of left knee arthroscopy, diabetes, and asthma." (Id.)
18 He also found that Plaintiff's "medically determinable mental
19 impairment of depression does not cause more than minimal
20 limitation in the claimant's ability to perform basic mental work
21 activities and is therefore non-severe." (Id.) At step three,
22 the ALJ determined that Plaintiff's impairments did not meet or
23 equal any of the impairments in the Listing. (AR 18.) At step
24 four, the ALJ found that Plaintiff retained the RFC to perform
25 "light work"² with the limitations that Plaintiff

26
27 ²"Light work involves lifting no more than 20 pounds at a
28 time with frequent lifting or carrying of objects weighing up to
10 pounds," a "good deal of walking or standing" or sitting,

1 can lift and carry 20 pounds occasionally and 10 pounds
2 frequently; she can sit six hours in an eight-hour
3 workday with normal breaks; she can stand and walk six
4 hours in an eight-hour workday with normal breaks; she
5 can perform postural activities occasionally, but cannot
6 climb ladders, ropes, or scaffolds; she cannot work at
7 unprotected heights or balance; she can perform frequent,
8 but not constant fine and gross manipulation bilaterally;
9 and she should avoid pulmonary irritants.

10 (Id.) At step five, the ALJ found that jobs existed in
11 significant numbers in the national economy that Plaintiff could
12 perform. (AR 20-21.) Accordingly, the ALJ determined that
13 Plaintiff was not disabled. (AR 21.)

14 **V. DISCUSSION**

15 Plaintiff alleges that the ALJ erred in (1) finding her
16 subjective symptom testimony not credible and (2) evaluating the
17 opinions of her treating physician. (J. Stip. at 3.)³

18 A. The ALJ Did Not Improperly Discount Plaintiff's 19 Subjective Symptom Testimony

20 Plaintiff argues that the ALJ failed to articulate clear and
21 convincing reasons for discounting her subjective symptom
22 testimony. (J. Stip. at 3-6, 16-17.) Reversal is not warranted
23 on this basis, however, because the ALJ made specific, clear

24 _____
25 "with some pushing and pulling of arm or leg controls." 20
26 C.F.R. § 416.967(b). A person capable of performing light work
27 is also capable of performing sedentary work, as defined in
28 § 416.967(a). Id.

³Plaintiff does not contest the ALJ's finding that her
mental impairment was not severe. (J. Stip. at 27.)

1 findings as to Plaintiff's credibility that were consistent with
2 the medical evidence of record.

3 1. Applicable law

4 An ALJ's assessment of pain severity and claimant
5 credibility is entitled to "great weight." See Weetman v.
6 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
7 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
8 believe every allegation of disabling pain, or else disability
9 benefits would be available for the asking, a result plainly
10 contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674
11 F.3d 1104, 1112 (9th Cir. 2012) (internal quotation marks and
12 citation omitted). In evaluating a claimant's subjective symptom
13 testimony, the ALJ engages in a two-step analysis. See
14 Lingenfelter, 504 F.3d at 1035-36. "First, the ALJ must
15 determine whether the claimant has presented objective medical
16 evidence of an underlying impairment [that] could reasonably be
17 expected to produce the pain or other symptoms alleged." Id. at
18 1036 (internal quotation marks omitted). If such objective
19 medical evidence exists, the ALJ may not reject a claimant's
20 testimony "simply because there is no showing that the impairment
21 can reasonably produce the *degree* of symptom alleged." Smolen v.
22 Chater, 80 F.3d 1273, 1282 (9th Cir. 1996) (emphasis in
23 original). When the ALJ finds a claimant's subjective complaints
24 not credible, the ALJ must make specific findings that support
25 the conclusion. See Berry v. Astrue, 622 F.3d 1228, 1234 (9th
26 Cir. 2010). Those credibility findings must be supported by the
27 record, but the ALJ need not provide "detailed" citations to it.
28 See Carter v. Astrue, No. 08 CV 0895 JM (PCL), 2009 WL 2382536,

1 at *4 (S.D. Cal. July 30, 2009) (citing Thomas v. Barnhart, 278
2 F.3d 947, 958-59 (9th Cir. 2002)). Absent affirmative evidence
3 of malingering, however, those findings must provide "clear and
4 convincing" reasons for rejecting the claimant's testimony.
5 Lester, 81 F.3d at 834. If the ALJ's credibility finding is
6 supported by substantial evidence in the record, the reviewing
7 court "may not engage in second-guessing." Thomas, 278 F.3d at
8 959.

9 2. Relevant facts

10 In connection with her SSI application, Plaintiff alleged
11 that she suffered from the following conditions:

12 arthritis (back & neck), carpal tunnel (left & right
13 hands/wrists), left knee, depression[,] back/neck:
14 arthritis in back/neck. They get very stiff & I have a
15 hard time moving, bending or turning. [C]arpal tunnel:
16 It's in both of my wrists/hands. My hands are constantly
17 stiff, numb, and hurting. My arms get extremely tired &
18 numb, like I've been using them for hours when I've been
19 doing a simple task Back, neck, [left] knee,
20 depression, carpal tunnel in both arms[.]

21 (AR 91.) She claimed that her conditions limited her ability to
22 work in the following ways:

23 back/neck: I cannot pick up heavy items, I get very stiff
24 and have a difficult time moving. It also is very
25 painful carpal tunnel: I drop things & have a hard time
26 picking things up. For example: I have a difficult time
27 doing housework because I drop the dishes when I'm
28 washing them[.] knee: I can't squat, walk [a lot], and

1 always need to lean or balance on something[.]
2 depression: It affects my desire to be around other
3 people[.] back/neck, carpal tunnel: very painful[.]
4 knee: very painful & I have begun to gain weight because
5 I am inactive, due to the injury[.] depression: I used
6 to like being around people, but now I avoid them and
7 stay at home. The only thing that forces me to
8 participate in life are my kids & grandkids and being
9 there for their activities[.]

10 (Id.) Her application also stated, "I do not need help in
11 personal care, hygiene or upkeep of a home." (AR 81.)

12 At the hearing, Plaintiff testified that she had "problems"
13 with her knees, back, arms, and hands for which she received
14 shots to relieve the pain. (AR 460.) She stated that the
15 injections in her lower back provided "some" relief but the pain
16 "comes back within a month"; the injections in her hand "helped
17 me out"; and the injections in her hip to treat pain in her leg
18 did not work and the pain "just came back like right away." (AR
19 461.) She testified that her arms were numb and tingly and she
20 was unable to grasp properly and thus "drop[s] things a lot."
21 (AR 463.) She stated that she could not lift any more than 10
22 pounds. (Id.) She testified that she could go grocery shopping
23 for 20 minutes at a time and be "on [her] feet continuously for
24 20 minutes" without a break, but she would feel tired afterward
25 and need to rest for 20 minutes before being able to put the
26 groceries away. (AR 465-66.) She could cook for 15 minutes and
27 then would feel "okay" and would "sit down and relax" before
28 getting up and starting to do the dishes; clean the bathroom for

1 about two minutes and feel "okay" afterward; and vacuum for
2 "[a]bout three minutes" and then "relax for a little bit." (AR
3 466-68.) She was able to sleep "through the night" without pain
4 after taking Ambien. (AR 475-76.) She took care of four
5 children who were under 18 and living at home. (AR 458-59.)
6 When asked whether she would be able to work if she "didn't have
7 to lift more than . . . 10 pounds" and "could alternate between
8 sitting/standing between the eight-hour workday as you so desire"
9 but "would have to do this eight hours a day for five days a
10 week," she stated that she could not because of "the pain that
11 goes down my neck to my arms." (AR 469.) She also stated that
12 her "overall condition" had gotten "worse" since she last
13 testified, in May 2010. (Id.)

14 In his written opinion, the ALJ found, "[a]fter careful
15 consideration of the evidence," that Plaintiff's "medically
16 determinable impairments could reasonably be expected to cause
17 the alleged symptoms; however, the claimant's statements
18 concerning the intensity, persistence and limiting effects of
19 these symptoms are not credible to the extent they are
20 inconsistent with" the ALJ's RFC assessment. (AR 19.) He noted
21 that Plaintiff "acknowledges pain relief and sleeping well at
22 night" and that despite her "alleged symptoms and limitations,"
23 she "continues to cook, perform household chores, and shop for
24 groceries." (Id.) He further noted that "[p]ain management
25 progress notes indicate the claimant experiences pain relief
26 because of medication and injections," and "a review of the
27 laboratory findings shows the consultative examiners were
28 justified in their functional assessments [that Plaintiff could

1 perform medium work]." (Id.) He gave "some weight" to
2 Plaintiff's "treatment for chronic pain" but found that the
3 "severity of the pain" that Plaintiff alleged was
4 "disproportionate to the signs and laboratory findings." (Id.)
5 He further noted that Plaintiff "acknowledges she still cooks,
6 performs household chores, and shops for groceries" and "performs
7 activities of daily living and sleeps well," and thus it was
8 unreasonable to conclude that she was not capable of performing
9 even sedentary work. (AR 20.) He noted that "[a]lthough the
10 claimant's alleged symptoms and limitations are not entirely
11 supported by the objective medical evidence, the undersigned has
12 considered them," and he concluded that "[t]here is no
13 justification for deviating from the [RFC] assessment noted in
14 the [June 2010] decision." (Id.)

15 3. Analysis

16 Reversal is not warranted based on the ALJ's alleged failure
17 to make proper credibility findings or properly consider
18 Plaintiff's subjective symptoms. Contrary to Plaintiff's
19 arguments, the ALJ provided specific reasons for rejecting
20 Plaintiff's credibility: medical evidence showed that her
21 symptoms were well controlled with medication and injections; her
22 daily activities were inconsistent with her pain allegations; and
23 her allegations of the severity of her pain were inconsistent
24 with such objective medical evidence as test results and
25 laboratory findings. (AR 19-20.)⁴

27 ⁴Defendant asserts that the ALJ incorporated by reference
28 his statement from the June 2010 decision that Plaintiff's poor
work history indicated that she was not credible regarding her

1 The ALJ correctly found that Plaintiff's testimony was
2 inconsistent with the objective medical evidence. Tests of
3 Plaintiff's knee in December 2006 showed only "very slight
4 lateral subluxation," no fracture, and "[t]iny suprapatellar
5 joint effusion." (AR 143.) X-rays taken after Plaintiff
6 underwent knee surgery in March 2008 (AR 212) revealed a "normal
7 left knee" with "no evidence of a fracture or osseous injury" (AR
8 362). Nerve conduction studies performed in January 2008, after
9 Plaintiff's May 2007 carpal tunnel surgery (AR 233), revealed
10 "mild[] improve[ment]" to Plaintiff's left wrist since the
11 surgery (AR 159). The same study showed new "[c]hronic cervical
12 radiculopathy," but another study performed later, in April 2010,
13 showed "[n]o evidence of cervical radiculopathy," indicating that
14 Plaintiff's condition had improved with treatment. (AR 268.) An
15 examining doctor also noted in July 2008 that "[s]ince her
16 surgery [Plaintiff] has improved carpal tunnel syndrome on the
17 left." (AR 414.) In September 2010, Dr. Navdeep Loomba, the
18 pain-management specialist to whom Plaintiff was referred by her
19 primary physician, noted that Plaintiff "has good range of motion
20 of the bilateral upper extremities," her motor strength was "5/5
21 in the bilateral upper extremities," "[s]ensory is grossly
22 normal, bilateral equal and intact to pinprick sensation," and

24 _____
25 alleged inability to work. (J. Stip. at 15; AR 29.) The ALJ did
26 not state that he was incorporating by reference that portion of
27 his previous opinion (see AR 19-20); thus, the Court does not
28 address this argument. See Stout v. Comm'r, Soc. Sec. Admin.,
454 F.3d 1050, 1054 (9th Cir. 2006) ("[W]e cannot affirm the
decision of an agency on a ground that the agency did not invoke
in making its decision." (internal quotation marks and citation
omitted)).

1 "[d]eep tendon reflexes are normal." (AR 432.) Dr. Loomba also
2 noted in March 2011 that Plaintiff's "pain is relieved by
3 medications, rest, position change," "[t]he pain medications are
4 helping," and injections relieved her pain by "50-60%." (AR
5 441.) An MRI of Plaintiff's cervical spine performed in February
6 2008 showed only "mild" loss of lordosis, "mild" disc space
7 narrowing and disc dessication, "minimal" and "mild" disc bulge,
8 and "slight" narrowing of the central canal. (AR 191-93.) Tests
9 of Plaintiff's lumbar spine in December 2006 showed "[v]ery
10 minimal degenerative change." (AR 143.) An x-ray of Plaintiff's
11 lumbar spine taken in June 2008 showed "[e]xtenuated lordosis"
12 and "moderate spurring of the anterior endplates of L1, L2, L4,
13 and L5" but "normal" disc space heights and facet joints and "no
14 obvious pars defects." (AR 342.) Another x-ray of Plaintiff's
15 lumbar spine, taken in October 2009, showed "narrowing of the L5-
16 S1 interspace consistent with discogenic disease" but "no
17 evidence of fracture or osseous injury," "no evidence of
18 spondylolysis or spondylolisthesis," "normal" "sacroiliac
19 joints," and "mild" osteoarthritis changes. (AR 360.)

20 In September 2007, consulting examiner Dr. Jeff Altman, a
21 specialist in physical medicine and rehabilitation (AR 171),
22 found that Plaintiff had only minimal impairments and that she
23 had a normal gait, did not appear to be in acute distress, had
24 good range of motion in her extremities and only mildly reduced
25 range of motion in the thoracolumbar spine with no tenderness
26 upon palpation, had intact strength and sensation, and was
27 neurologically intact. (AR 169-71.) In August 2008, consulting
28 examiner Dr. John Woodward, a neurologist and psychiatrist (AR

1 200), conducted a neurological examination of Plaintiff and found
2 that she had a normal gait, normal motion and coordination in her
3 extremities, intact reflexes, slight hypalgesia in her left foot,
4 and negative Tinel's sign and Phalen's sign for carpal tunnel
5 syndrome. (AR 198-200.) Dr. Altman and state agency physicians
6 Dr. Franklin Kalmar and Dr. G. Taylor-Holmes all opined that
7 Plaintiff was capable of performing medium work (AR 171, 173-77,
8 254-58), and Dr. Woodward similarly opined that Plaintiff had no
9 limitations in sitting, standing, walking, lifting, carrying, or
10 reaching; she could grasp, handle, finger, or feel frequently but
11 not continuously; and she could not engage in continuous, very
12 repetitive, or very strenuous activity in either hand because of
13 her carpal tunnel syndrome but could otherwise perform work
14 activities (AR 200). Plaintiff's asthma was also under control:
15 a September 2008 chest x-ray showed that Plaintiff's chest was
16 "normal" and her lungs were "expanded and clear." (AR 318.)
17 Similarly, Plaintiff's diabetes was well-controlled: in lab
18 results from December 2009, Plaintiff's mean blood glucose was
19 133, at or near normal for a diabetic⁵ (AR 357), and she did not
20 allege in her SSI application or testimony that she suffered from
21 any diabetes-related complications that affected her ability to
22 work (AR 91, 458-70).

23 Because Plaintiff's testimony conflicted with the evidence
24

25 ⁵Target blood sugar levels for nonpregnant adults with
26 diabetes are 70-130 mg/dl before a meal and <180 mg/dl after a
27 meal. See Checking Your Blood Glucose - American Diabetes
28 Association, available at <http://www.diabetes.org/living-with-diabetes/treatment-and-care/blood-glucose-control/checking-your-blood-glucose.html> (last visited Dec. 12, 2012).

1 that her medical conditions only minimally affected her ability
2 to work and that her pain, diabetes, and asthma were well-
3 controlled with medication and other treatments, the ALJ properly
4 discounted it. See, e.g., 20 C.F.R. § 416.929(c)(4)(iv) (ALJ may
5 consider effectiveness of medication in evaluating severity and
6 limiting effects of an impairment); SSR 96-7p, 1996 WL 374186, at
7 *6 ("medical signs and laboratory findings that . . . demonstrate
8 worsening or improvement of the underlying medical condition . .
9 . may also help an adjudicator to draw appropriate inferences
10 about the credibility of an individual's statements"); Johnson v.
11 Shalala, 60 F.3d 1428, 1434 (9th Cir. 1995) (holding that
12 "contradictions between claimant's testimony and the relevant
13 medical evidence" provided clear and convincing reason for ALJ to
14 reject plaintiff's subjective symptom testimony); Tonapetyan v.
15 Halter, 242 F.3d 1144, 1148 (9th Cir. 2001) (credibility
16 determination based on, among other things, plaintiff's "tendency
17 to exaggerate" proper when supported by "substantial evidence").

18 The ALJ's finding that Plaintiff's testimony conflicted with
19 her daily activities was also proper. Although it is true that
20 "one does not need to be 'utterly incapacitated' in order to be
21 disabled," Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir.
22 2001), the extent of Plaintiff's activities here supports the
23 ALJ's finding that Plaintiff's reports of her impairment were not
24 fully credible. See Bray v. Comm'r of Soc. Sec. Admin., 554 F.3d
25 1219, 1227 (9th Cir. 2009); Curry v. Sullivan, 925 F.2d 1127,
26 1130 (9th Cir. 1990) (finding that claimant's ability to "take
27 care of her personal needs, prepare easy meals, do light
28 housework and shop for some groceries . . . may be seen as

1 inconsistent with the presence of a condition which would
2 preclude all work activity") (citing Fair v. Bowen, 885 F.2d 597,
3 604 (9th Cir. 1989)). The ALJ properly noted that Plaintiff's
4 ability to do daily activities such as cooking, cleaning, and
5 grocery shopping for herself and four children was at odds with
6 her testimony that she could not perform even the most basic of
7 work activities. (AR 19-20.) Although Plaintiff testified that
8 sometimes her sons helped her with her household chores, she
9 wrote on her application that she did not "need help in . . .
10 upkeep of a home." (AR 81.)

11 The ALJ provided legally sufficient reasons for rejecting
12 Plaintiff's testimony and specific examples of how Plaintiff's
13 testimony was contradicted by the record. In fact, he appears to
14 have given Plaintiff the benefit of the doubt with respect to the
15 severity of her restrictions, as most of the consultative
16 physicians found that she was capable of medium work (see AR 171,
17 173-77, 254-58) but the ALJ's RFC finding limited her to light
18 work with some additional restrictions (AR 18). He thus did not
19 materially err in assessing Plaintiff's credibility, and reversal
20 is not warranted on this basis.

21 B. The ALJ Did Not Err in Considering the Opinions of
22 Plaintiff's Treating Physician

23 Plaintiff contends that the ALJ did not properly evaluate
24 the opinions of her treating physician, Dr. Arthur Jimenez. (J.
25 Stip. at 18-20, 25-27.) Reversal is not warranted on this basis
26 because the ALJ gave specific and legitimate reasons for
27 rejecting Dr. Jimenez's opinions, and the ALJ's evaluation of the
28 medical evidence was consistent with substantial evidence in the

1 record.

2 1. Applicable law

3 Three types of physicians may offer opinions in social
4 security cases: "(1) those who treat[ed] the claimant (treating
5 physicians); (2) those who examine[d] but d[id] not treat the
6 claimant (examining physicians); and (3) those who neither
7 examine[d] nor treat[ed] the claimant (non-examining
8 physicians)." Lester, 81 F.3d at 830. A treating physician's
9 opinion is generally entitled to more weight than the opinion of
10 a doctor who examined but did not treat the claimant, and an
11 examining physician's opinion is generally entitled to more
12 weight than that of a nonexamining physician. Id.

13 The opinions of treating physicians are generally afforded
14 more weight than the opinions of nontreating physicians because
15 treating physicians are employed to cure and have a greater
16 opportunity to know and observe the claimant. Smolen, 80 F.3d at
17 1285. The weight given a treating physician's opinion depends on
18 whether it was supported by sufficient medical data and was
19 consistent with other evidence in the record. See 20 C.F.R.
20 § 416.927(c)(2). If a treating physician's opinion was well
21 supported by medically acceptable clinical and laboratory
22 diagnostic techniques and is not inconsistent with the other
23 substantial evidence in the record, it should be given
24 controlling weight and rejected only for "clear and convincing"
25 reasons. See Lester, 81 F.3d at 830; § 416.927(c)(2). When a
26 treating physician's opinion conflicts with other medical
27 evidence or was not supported by clinical or laboratory findings,
28 the ALJ must provide only "specific and legitimate reasons" for

1 discounting that doctor's opinion. Orn v. Astrue, 495 F.3d 625,
2 632 (9th Cir. 2007). Indeed, the ALJ may discredit treating-
3 doctor opinions that are conclusory, brief, and unsupported by
4 the record as a whole or by objective medical findings. See
5 Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th
6 Cir. 2004); Thomas, 278 F.3d at 957. Other factors relevant to
7 the evaluation of a treating physician's opinion include the
8 "[l]ength of the treatment relationship and the frequency of
9 examination" as well as the "[n]ature and extent of the treatment
10 relationship" between the patient and the physician.

11 § 416.927(c)(2)(i)-(ii).

12 2. Relevant facts

13 Plaintiff began seeing Dr. Jimenez as her primary care
14 physician in 2001 for her "diabetes, asthma, high blood pressure,
15 cholesterol problems, . . . thyroid, depression, knee injury, and
16 . . . back/neck problems." (AR 94.) She testified that she saw
17 Dr. Jimenez "at least once a month," "[m]ostly" for the pain in
18 her knees, back, arms, and hands. (AR 460.) In April 2010, Dr.
19 Jimenez filled out a check-box form stating that, in an eight-
20 hour workday, Plaintiff could not lift even 10 pounds; she could
21 stand, walk, and sit for less than two hours a workday; she could
22 sit 15 minutes and stand 20 minutes before needing to change
23 position; she must walk for 20 minutes every 20 minutes; she
24 could only occasionally twist and climb stairs and could never
25 stoop, crouch, or climb ladders; she must avoid concentrated
26 exposure to humidity and all exposure to extreme temperatures,
27 airborne irritants, and heights; and she would likely be absent
28 from work more than three times a month. (AR 379-81.) He stated

1 that Plaintiff's "lumbar narrowing" and "carpal tunnel syndrome"
2 supported his conclusions. (AR 380.) In September 2010 he
3 filled out an RFC Questionnaire noting substantially similar
4 limitations. (AR 434-38.)

5 The ALJ evaluated Dr. Jimenez's opinions as follows:

6 In physical residual functional capacity assessments
7 dated April 4, 2010 and September 2, 2010, Dr. Jimenez
8 states the claimant cannot even sustain sedentary work
9 and would miss work more than three times a month.
10 However, the undersigned gives little weight to Dr.
11 Jimenez's opinion. As discussed in the undersigned's
12 last decision, Dr. Altman's consultative orthopedic
13 evaluation and Dr. Woodard's consultative neurologic
14 evaluation led them to conclude that the claimant was
15 capable of performing medium work. Additionally, a
16 review of the laboratory findings shows the consultative
17 examiners were justified in their functional assessments.
18 The undersigned gives some weight to the claimant's
19 treatment for chronic pain, but the severity of the pain
20 is disproportionate to the signs and laboratory findings.
21 The claimant also acknowledges she still cooks, performs
22 household chores, and shops for groceries. Thus, Dr.
23 Jimenez unreasonably concludes the claimant cannot
24 perform sedentary work and would miss work more than
25 three times a month.

26 (AR 20.)

27 3. Analysis

28 As discussed above, evidence in the record supported the

1 ALJ's finding that Plaintiff was capable of performing light work
2 with some restrictions. (See AR 43, 159, 169-71, 173-77, 191-93,
3 198-200, 254-58, 268, 318, 342, 357, 360, 362, 414, 432, 441.)
4 Dr. Jimenez's two RFC forms were in check-box form, were
5 conclusory, and conflicted with substantial other evidence in the
6 record; the ALJ was entitled to reject them on that basis. See
7 Batson, 359 F.3d at 1195 ("The ALJ need not accept the opinion of
8 any physician, including a treating physician, if that opinion is
9 brief, conclusory, and inadequately supported by clinical
10 findings."). Dr. Jimenez noted that Plaintiff had complained of
11 pain in her back, neck, legs, and arms and that she had been
12 diagnosed with asthma, degenerative conditions in her spine and
13 knee, and carpal tunnel syndrome (AR 380, 464), but he did not
14 explain how these diagnoses led to his findings that she was
15 incapable of even sedentary work, particularly given the ample
16 evidence in the record, including results from tests and
17 consultations ordered by Dr. Jimenez himself (see AR 156, 159,
18 191-93, 265, 268, 318, 342, 357, 360, 362, 430-32, 441), that
19 Plaintiff's conditions were well-controlled with medication and
20 other treatments and were not disabling. Plaintiff does not
21 point to anything in Dr. Jimenez's treatment notes for Plaintiff
22 supporting the extremely restrictive findings on the two forms.
23 Moreover, the ALJ was entitled to credit the opinions of Drs.
24 Woodman and Altman instead of Dr. Jimenez because their opinions
25 were supported by independent clinical findings and thus
26 constituted substantial evidence upon which the ALJ could
27 properly rely. See Tonapetyan, 242 F.3d at 1149; Andrews v.
28 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995). Further, the

1 opinions of Drs. Woodman, Altman, Kalmar, and Taylor-Holmes were
2 consistent with each other and with substantial other evidence in
3 the record, and thus the ALJ was entitled to give those opinions
4 more weight than Dr. Jimenez's. See Tonapetyan, 242 F.3d at 1149
5 (opinion of nonexamining medical expert "may constitute
6 substantial evidence when it is consistent with other independent
7 evidence in the record"); Andrews, 53 F.3d at 1041.

8 The ALJ was also entitled to reject Dr. Jimenez's opinions
9 to the extent they imposed a highly restrictive RFC that was
10 inconsistent with Plaintiff's daily activities. Plaintiff
11 acknowledged that she daily kept house for herself and four
12 minors and that she "[did] not need help" in doing so (AR 81,
13 458-59), and yet Dr. Jimenez found that she would have to miss
14 more than three days of work a month. His finding was
15 inconsistent with the reality of Plaintiff's daily activities.
16 See Rollins, 261 F.3d at 856 (ALJ's finding that doctor's
17 "restrictions appear to be inconsistent with the level of
18 activity that [plaintiff] engaged in by maintaining a household
19 and raising two young children, with no significant assistance
20 from her ex husband," was specific and legitimate reason for
21 discounting opinion); Morgan v. Comm'r of Soc. Sec. Admin., 169
22 F.3d 595, 601-02 (9th Cir. 1999) (ALJ permissibly rejected
23 treating physician's opinion when it conflicted with plaintiff's
24 activities); see also Fisher v. Astrue, 429 F. App'x 649, 652
25 (9th Cir. 2011) (conflict between doctor's opinion and claimant's
26 daily activities was specific and legitimate reason to discount
27 opinion).

28 Plaintiff argues that under Orn, 495 F.3d at 632, even if

1 the laboratory test results and other independent evidence in the
2 record "did not fully corroborate Dr. Jimenez's opinions," in
3 rejecting those opinions the ALJ was still required to articulate
4 "specific and legitimate reasons based on substantial evidence in
5 the record." (J. Stip. at 25-26.) As discussed above, that is
6 precisely what the ALJ did. The ALJ properly found that Dr.
7 Jimenez's opinions were inconsistent with the laboratory findings
8 and other medical evidence in the record and his RFC assessment
9 was inconsistent with Plaintiff's daily activities. (AR 19-20.)
10 These were specific and legitimate reasons for rejecting Dr.
11 Jimenez's opinions, and they were supported by substantial
12 evidence in the record. The ALJ's rejection of Dr. Jimenez's
13 opinions was therefore proper. See Orn, 495 F.3d at 632-33.

14 The Court must consider the ALJ's decision in the context of
15 "the entire record as a whole," and if the "evidence is
16 susceptible to more than one rational interpretation, the ALJ's
17 decision should be upheld." Ryan v. Comm'r of Soc. Sec., 528
18 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation marks
19 omitted). Although Plaintiff points to various pieces of
20 evidence in the record that could support a more restrictive RFC
21 finding if interpreted differently than by the ALJ, read in the
22 context of the record as a whole, Plaintiff's symptoms were not
23 as severe as she alleged and were well-controlled with medication
24 and other treatments; the ALJ reasonably found that Plaintiff's
25 limitations did not prevent her from being able to work.
26 Reversal is therefore not warranted on this basis.

27 **VI. CONCLUSION**

28 Consistent with the foregoing, and pursuant to sentence four

1 of 42 U.S.C. § 405(g),⁶ IT IS ORDERED that judgment be entered
2 AFFIRMING the decision of the Commissioner and dismissing this
3 action with prejudice. IT IS FURTHER ORDERED that the Clerk
4 serve copies of this Order and the Judgment on counsel for both
5 parties.

6
7 DATED: December 19, 2012


JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 _____
27 ⁶This sentence provides: "The [district] court shall have
28 power to enter, upon the pleadings and transcript of the record,
a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."