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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALINA RITCHIE,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
Commissioner of Social  
Security,  
Defendant.

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) Case No. EDCV 12-311 JC  
)  
) MEMORANDUM OPINION  
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**I. SUMMARY**

On March 20, 2012, plaintiff Alina Ritchie (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have consented to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; March 26, 2012 Case Management Order ¶ 5.

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1 Based on the record as a whole and the applicable law, the decision of the  
2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge  
3 (“ALJ”) are supported by substantial evidence and are free from material error.<sup>1</sup>

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**  
5 **DECISION**

6 On January 20, 2009 plaintiff filed applications for Supplemental Security  
7 Income and Disability Insurance Benefits. (Administrative Record (“AR”) 10,  
8 111, 118). Plaintiff asserted that she became disabled on January 1, 2006, due to  
9 depression, fatigue and extreme exhaustion. (AR 145-46). The ALJ examined the  
10 medical record and heard testimony from plaintiff (who was represented by  
11 counsel) on October 1, 2010. (AR 24-44).

12 On November 5, 2010, the ALJ determined that plaintiff was not disabled  
13 through the date of the decision. (AR 10-19). Specifically, the ALJ found:  
14 (1) plaintiff suffered from the following severe impairments: degenerative  
15 changes in the lumbar spine, obesity, and mood disorder (AR 12-13);  
16 (2) plaintiff’s impairments, considered singly or in combination, did not meet or  
17 medically equal a listed impairment (AR 13-14); (3) plaintiff retained the residual  
18 functional capacity to perform medium work (20 C.F.R. §§ 404.1567(c),  
19 416.967(c)) with additional nonexertional limitations<sup>2</sup> (AR 14); (4) plaintiff could  
20 not perform her past relevant work (AR 18); (5) there are jobs that exist in  
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22 <sup>1</sup>The harmless error rule applies to the review of administrative decisions regarding  
23 disability. See Batson v. Commissioner of Social Security Administration, 359 F.3d 1190, 1196  
24 (9th Cir. 2004) (applying harmless error standard); see also Stout v. Commissioner, Social  
25 Security Administration, 454 F.3d 1050, 1054-56 (9th Cir. 2006) (discussing contours of  
application of harmless error standard in social security cases).

26 <sup>2</sup>The ALJ determined that plaintiff: (1) could lift and/or carry 25 pounds frequently and  
27 50 pounds frequently [sic.]; (2) stand and/or walk for six hours out of an eight-hour workday; (3)  
28 sit for six hours out of an eight-hour workday; and (4) was limited to simple, routine, repetitive  
tasks in a non-public setting. (AR 14).

1 significant numbers in the national economy that plaintiff could perform,  
2 specifically dishwasher, laundry worker, hand packager, cleaner and housekeeper  
3 (AR 18-19); and (6) plaintiff's allegations regarding her limitations were not  
4 credible to the extent they were inconsistent with the ALJ's residual functional  
5 capacity assessment (AR 15).

6 The Appeals Council denied plaintiff's application for review. (AR 1).

### 7 **III. APPLICABLE LEGAL STANDARDS**

#### 8 **A. Sequential Evaluation Process**

9 To qualify for disability benefits, a claimant must show that the claimant is  
10 unable to engage in any substantial gainful activity by reason of a medically  
11 determinable physical or mental impairment which can be expected to result in  
12 death or which has lasted or can be expected to last for a continuous period of at  
13 least twelve months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing  
14 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of  
15 performing the work claimant previously performed and incapable of performing  
16 any other substantial gainful employment that exists in the national economy.  
17 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C.  
18 § 423(d)(2)(A)).

19 In assessing whether a claimant is disabled, an ALJ is to follow a five-step  
20 sequential evaluation process:

- 21 (1) Is the claimant presently engaged in substantial gainful activity? If  
22 so, the claimant is not disabled. If not, proceed to step two.
- 23 (2) Is the claimant's alleged impairment sufficiently severe to limit  
24 the claimant's ability to work? If not, the claimant is not  
25 disabled. If so, proceed to step three.
- 26 (3) Does the claimant's impairment, or combination of  
27 impairments, meet or equal an impairment listed in 20 C.F.R.

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1 Part 404, Subpart P, Appendix 1? If so, the claimant is disabled. If  
2 not, proceed to step four.

3 (4) Does the claimant possess the residual functional capacity to  
4 perform claimant's past relevant work? If so, the claimant is  
5 not disabled. If not, proceed to step five.

6 (5) Does the claimant's residual functional capacity, when  
7 considered with the claimant's age, education, and work  
8 experience, allow the claimant to adjust to other work that  
9 exists in significant numbers in the national economy? If so,  
10 the claimant is not disabled. If not, the claimant is disabled.

11 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th  
12 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

13 The claimant has the burden of proof at steps one through four, and the  
14 Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262  
15 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1098); see also  
16 Burch, 400 F.3d at 679 (claimant carries initial burden of proving disability).

#### 17 **B. Standard of Review**

18 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of  
19 benefits only if it is not supported by substantial evidence or if it is based on legal  
20 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.  
21 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457  
22 (9th Cir. 1995)). Substantial evidence is "such relevant evidence as a reasonable  
23 mind might accept as adequate to support a conclusion." Richardson v. Perales,  
24 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a  
25 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing  
26 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

27 To determine whether substantial evidence supports a finding, a court must  
28 "consider the record as a whole, weighing both evidence that supports and

1 evidence that detracts from the [Commissioner’s] conclusion.” Aukland v.  
2 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d  
3 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming  
4 or reversing the ALJ’s conclusion, a court may not substitute its judgment for that  
5 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

#### 6 **IV. DISCUSSION**

##### 7 **A. The ALJ Was Not Required to Obtain Testimony from a** 8 **Vocational Expert at Step Five**

##### 9 **1. Pertinent Law**

10 At step five of the sequential evaluation process, the Commissioner has the  
11 burden to demonstrate that the claimant can perform some other work that exists in  
12 “significant numbers” in the national economy, taking into account the claimant’s  
13 residual functional capacity, age, education, and work experience. Tackett, 180  
14 F.3d at 1100 (citing 20 C.F.R. § 404.1560(b)(3)); 42 U.S.C. § 423(d)(2)(A). The  
15 Commissioner may satisfy this burden, depending upon the circumstances, by the  
16 testimony of a vocational expert or by reference to the Medical-Vocational  
17 Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2 (commonly  
18 known as “the Grids”). Tackett, 180 F.3d at 1100-01 (citations omitted).

19 When a claimant suffers only exertional (strength-related) limitations, the  
20 ALJ must consult the Grids. Lounsbury v. Barnhart, 468 F.3d 1111, 1115 (9th  
21 Cir.), as amended (2006). When a claimant suffers only non-exertional  
22 limitations, the Grids (which are predicated solely on a claimant’s exertional  
23 limitations) are generally inappropriate and the ALJ must rely on other evidence.<sup>3</sup>

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26 <sup>3</sup>An ALJ is required to seek the assistance of a vocational expert when the non-exertional  
27 limitations are at a sufficient level of severity such as to the make the Grids inapplicable to the  
28 particular case. Hoopai v. Astrue, 499 F.3d 1071, 1076 (9th Cir. 2007). The severity of  
limitations at step five that would require use of a vocational expert must be greater than the  
severity of impairments determined at step two. Id.

1 Id. When a claimant suffers from both exertional and nonexertional limitations,  
2 the ALJ must first determine whether the Grids mandate a finding of disability  
3 with respect to exertional limitations. See Lounsbury, 468 F.3d at 1116; Cooper  
4 v. Sullivan, 880 F.2d 1152, 1155 (9th Cir. 1989). If so, the claimant must be  
5 awarded benefits. Cooper, 880 F.2d at 1155. If not, and if the claimant suffers  
6 from significant and sufficiently severe non-exertional limitations, not accounted  
7 for in the Grids, the ALJ must take the testimony of a vocational expert. Hoopai v.  
8 Astrue, 499 F.3d 1071, 1076 (9th Cir. 2007).

## 9 **2. Analysis**

10 Plaintiff essentially contends that the ALJ’s non-disability finding at step  
11 five was not supported by substantial evidence because the ALJ relied on the  
12 Grids – specifically, 20 C.F.R. Part 404, Subpart P, Appendix 2 Section 203.29  
13 (“Section 203.29”) – rather than testimony from a vocational expert. (Plaintiff’s  
14 Motion at 2-6). Plaintiff’s argument lacks merit.

15 Here, substantial evidence supports the ALJ’s finding that plaintiff’s non-  
16 exertional limitation to simple, routine, repetitive tasks in a non-public setting  
17 “[had] little or no effect” on plaintiff’s ability to do “unskilled medium work.”<sup>4</sup>  
18 (AR 15). As the ALJ noted, treatment records reflect that plaintiff received  
19 “routine, conservative, and non-emergency treatment” for her mental impairments.  
20 More specifically, although plaintiff had previously been treated for depression,  
21 treatment records for the period after plaintiff’s alleged onset date reflect only that  
22 plaintiff reported “multiple stressors” in mid-2006 but stopped psychiatric  
23 treatment in June 2006. (AR 15-16) (citing Exhibit 3F [AR 220-322]). In  
24 addition, an examining psychiatrist found plaintiff’s overall psychiatric limitations  
25 to be “none to mild.” (AR 16) (citing Exhibit 7F [AR 345-46]). The ALJ noted

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27 <sup>4</sup>Plaintiff does not challenge the ALJ’s assessment that she has the residual functional  
28 capacity to perform the full range of work at the medium exertional level. (Plaintiff’s Motion at  
2-6).

1 that the state agency reviewing physicians found limitations from plaintiff's  
2 mental impairments to range only from non-severe to mild. (AR 17) (citing  
3 Exhibits 8F [AR 349-59], 9F [AR 360-62]; 12F [AR 382-92]; 13F [AR 393-94];  
4 18F [AR 432-33]). The ALJ also noted that a 2009 mental status examination for  
5 plaintiff was "fairly normal." (AR 18) (citing Exhibit 11F at 1 [AR 378]).  
6 Although plaintiff argues in a conclusory manner that the non-exertional  
7 limitations identified by the ALJ "have significant vocational ramifications"  
8 (Plaintiff's Motion at 4), the Court will not second-guess the ALJ's reasonable  
9 determination that they do not, even if the medical evidence could give rise to  
10 inferences more favorable to plaintiff. See Rollins v. Massanari, 261 F.3d 853,  
11 857 (9th Cir. 2001) (not court's role to second-guess ALJ's reasonable  
12 interpretation of the evidence) (citation omitted); cf. Carmickle v. Commissioner,  
13 Social Security Administration, 533 F.3d 1155, 1161 n.2 (courts "ordinarily will  
14 not consider matters on appeal that are not specifically and distinctly argued in an  
15 appellant's opening brief") (citation and internal quotation marks omitted).

16 Since the ALJ essentially concluded that the Grids accurately and  
17 completely accounted for all of plaintiff's impairments, the ALJ properly relied on  
18 Section 203.29 to find plaintiff not disabled.<sup>5</sup> See, e.g., Hoopai, 499 F.3d at  
19 1076-77 (holding that ALJ properly relied on the Grids where substantial evidence  
20 supported the ALJ's conclusion that the claimant's depression was not sufficiently  
21 severe to limit the range of work claimant could do); Prather v. Astrue, 2010 WL  
22 2102824, \*12 (E.D. Cal. May 24, 2010) (rejecting plaintiff's argument that ALJ  
23 erred by not consulting vocational expert at step five where ALJ determined that

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25 <sup>5</sup>Plaintiff correctly notes that at step five the ALJ identified specific representative jobs  
26 for plaintiff but did not provide the Dictionary of Occupational Titles ("DOT") codes for such  
27 jobs. (Plaintiff's Motion at 5; see AR 19). To the extent the ALJ erred in this respect, however,  
28 any error was harmless since the ALJ was not required to identify specific jobs in this case. See  
Odle v. Heckler, 707 F.2d 439, 440 (9th Cir.1983) (courts need not identify "specific jobs" when  
Grids are applied) (citation omitted).

1 plaintiff's non-exertional limitations "had little or no effect on the occupational  
2 base of unskilled medium work").

3 Accordingly, plaintiff is not entitled to a reversal or remand on this basis.

4 **B. The ALJ Properly Evaluated Plaintiff's Credibility**

5 Plaintiff contends that the ALJ inadequately evaluated the credibility of her  
6 subjective complaints.<sup>6</sup> (Plaintiff's Motion at 6-7). The Court disagrees.

7 **1. Pertinent Law**

8 Questions of credibility and resolutions of conflicts in the testimony are  
9 functions solely of the Commissioner. Greger v. Barnhart, 464 F.3d 968, 972 (9th  
10 Cir. 2006). If the ALJ's interpretation of the claimant's testimony is reasonable  
11 and is supported by substantial evidence, it is not the court's role to "second-  
12 guess" it. Rollins, 261 F.3d at 857.

13 An ALJ is not required to believe every allegation of disabling pain or other  
14 non-exertional impairment. Orn v. Astrue, 495 F.3d 625, 635 (9th Cir. 2007)  
15 (citing Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)). If the record establishes  
16 the existence of a medically determinable impairment that could reasonably give  
17 rise to symptoms assertedly suffered by a claimant, an ALJ must make a finding as  
18 to the credibility of the claimant's statements about the symptoms and their  
19 functional effect. Robbins, 466 F.3d 880 at 883 (citations omitted). Where the  
20 record includes objective medical evidence that the claimant suffers from an  
21 impairment that could reasonably produce the symptoms of which the claimant  
22 complains, an adverse credibility finding must be based on clear and convincing  
23 reasons. Carmickle, 533 F.3d at 1160 (citations omitted). The only time this  
24 standard does not apply is when there is affirmative evidence of malingering. Id.

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26 <sup>6</sup>The argument plaintiff provides in support of this claim appears to pertain to an entirely  
27 different claimant. (Plaintiff's Motion at 6-8). Nonetheless, the Court has evaluated whether the  
28 ALJ's credibility evaluation in plaintiff's case was supported by substantial evidence and free  
from material error.



1 The ALJ’s credibility findings “must be sufficiently specific to allow a reviewing  
2 court to conclude the ALJ rejected the claimant’s testimony on permissible  
3 grounds and did not arbitrarily discredit the claimant’s testimony.” Moisa v.  
4 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004).

5 To find the claimant not credible, an ALJ must rely either on reasons  
6 unrelated to the subjective testimony (*e.g.*, reputation for dishonesty), internal  
7 contradictions in the testimony, or conflicts between the claimant’s testimony and  
8 the claimant’s conduct (*e.g.*, daily activities, work record, unexplained or  
9 inadequately explained failure to seek treatment or to follow prescribed course of  
10 treatment). Orn, 495 F.3d at 636; Robbins, 466 F.3d at 883; Burch, 400 F.3d at  
11 680-81; SSR 96-7p. Although an ALJ may not disregard such claimant’s  
12 testimony solely because it is not substantiated affirmatively by objective medical  
13 evidence, the lack of medical evidence is a factor that the ALJ can consider in his  
14 credibility assessment. Burch, 400 F.3d at 681.

## 15 2. Analysis

16 First, the ALJ properly discredited plaintiff’s subjective complaints due to  
17 internal conflicts within plaintiff’s own statements and testimony. See  
18 Light v. Social Security Administration, 119 F.3d 789, 792 (9th Cir.), as amended  
19 (1997) (in weighing plaintiff’s credibility, ALJ may consider “inconsistencies  
20 either in [plaintiff’s] testimony or between his testimony and his conduct”); see  
21 also Fair, 885 F.2d at 604 n.5 (ALJ can reject pain testimony based on  
22 contradictions in plaintiff’s testimony). As the ALJ noted, plaintiff testified that  
23 she received unemployment benefits during her period of alleged disability, which  
24 required plaintiff “to repeatedly certify she was ready, willing and able to work.”  
25 (AR 15) (citing AR 32-33). The ALJ could properly conclude that such evidence  
26 of plaintiff’s apparent dishonesty eroded the credibility of plaintiff’s other  
27 testimony. See Tonapetyan v. Halter, 242 F.3d 1144, 1148 (9th Cir. 2001) (“In  
28 assessing the claimant’s credibility, the ALJ may use ‘ordinary techniques of

1 credibility evaluation,’ such as considering the claimant’s reputation for  
2 truthfulness and any inconsistent statements in her testimony.”).

3 Second, the ALJ properly discredited plaintiff’s subjective complaints as  
4 inconsistent with plaintiff’s daily activities. See Thomas v. Barnhart, 278 F.3d  
5 947, 958-59 (9th Cir. 2002) (inconsistency between the claimant’s testimony and  
6 the claimant’s conduct supported rejection of the claimant’s credibility); Verduzco  
7 v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (inconsistencies between claimant’s  
8 testimony and actions cited as a clear and convincing reason for rejecting the  
9 claimant’s testimony). For example, the ALJ noted that in spite of plaintiff’s  
10 alleged exertional limitations, plaintiff acknowledged that she maintains a valid  
11 driver’s license and continues to drive independently. (AR 15, 41).

12 Third, the ALJ properly discredited plaintiff’s subjective complaints as  
13 inconsistent with plaintiff’s conservative medical treatment. See Meanel v. Apfel,  
14 172 F.3d 1111, 1114 (9th Cir. 1999) (ALJ properly considered, as part of  
15 credibility evaluation, treating physician’s failure to prescribe, and claimant’s  
16 failure to request, medical treatment commensurate with the “supposedly  
17 excruciating” pain alleged, and the “minimal, conservative treatment”) (citing  
18 Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991) (en banc)); see Fair, 885  
19 F.2d at 604 (ALJ permissibly considered discrepancies between the claimant’s  
20 allegations of “persistent and increasingly severe pain” and the nature and extent  
21 of treatment obtained). For example, as noted above, the medical records reflect  
22 that plaintiff received routine, conservative, and non-emergency treatment for her  
23 mental impairments, and stopped psychiatric treatment within six months after the  
24 alleged onset date (*i.e.*, in June 2006). (AR 15-16, 220-322). In addition, as the  
25 ALJ noted, although plaintiff testified that she was unable to work due to pain in  
26 her back and hips, she also stated that she did not “like” narcotics, and took only  
27 over-the-counter pain medication (*i.e.* Tylenol, aspirin or Advil). (AR 15, 38-39);  
28 see Smolen v. Chater, 80 F.3d 1273, 1284 (9th Cir. 1996) (ALJ may consider

1 failure to “seek treatment or to follow a prescribed course of treatment” in  
2 assessing credibility). While an ALJ may not reject symptom testimony where a  
3 claimant provides “evidence of a good reason for not taking medication,” Smolen,  
4 80 F.3d at 1284 (citations omitted), plaintiff has not presented such a sufficient  
5 reason.

6 Finally, the ALJ properly discredited plaintiff’s subjective symptom  
7 testimony due, in part, to the absence of supporting objective medical evidence.  
8 Burch, 400 F.3d at 681; Rollins, 261 F.3d at 857 (“While subjective pain  
9 testimony cannot be rejected on the sole ground that it is not fully corroborated by  
10 objective medical evidence, the medical evidence is still a relevant factor in  
11 determining the severity of the claimant’s pain and its disabling effects.”) (citing  
12 20 C.F.R. § 404.1529(c)(2)). For example, as the ALJ noted, the report of a  
13 complete internal medicine evaluation of plaintiff reflected “no significant  
14 impairments in the range of motion despite [plaintiffs] subjective complaints of  
15 back pain.” (AR 16) (citing Exhibit 4F at 5 [AR 327]). The ALJ also noted that  
16 plaintiff’s treatment records do not reflect that in 2010 plaintiff complained of  
17 back pain, depression or anxiety, or received “actual treatment for any of  
18 [plaintiff’s] alleged disabling impairments.” (AR 16) (citing Exhibit 19F [AR  
19 435-71]).

20 Accordingly, plaintiff is not entitled to a reversal or remand on this basis.

21 **V. CONCLUSION**

22 For the foregoing reasons, the decision of the Commissioner of Social  
23 Security is affirmed.

24 LET JUDGMENT BE ENTERED ACCORDINGLY.

25 DATED: July 24, 2012

26 /s/

27 \_\_\_\_\_  
Honorable Jacqueline Chooljian  
28 UNITED STATES MAGISTRATE JUDGE