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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MARY GARCIA,	)	No. ED CV 12-01166-VBK
	)	
Plaintiff,	)	MEMORANDUM OPINION
	)	AND ORDER
v.	)	
	)	(Social Security Case)
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court for review of the decision by the Commissioner of Social Security denying Plaintiff's application for Period of Disability, Disability Insurance Benefits, and Supplemental Security Income. Pursuant to 28 U.S.C. §636©, the parties have consented that the case may be handled by the Magistrate Judge. The action arises under 42 U.S.C. §405(g), which authorizes the Court to enter judgment upon the pleadings and transcript of the record before the Commissioner. The parties have filed the Joint Stipulation ("JS"), and the Commissioner has filed the certified Administrative Record ("AR").

Plaintiff raises the following issues:



1 hand limitations were not warranted because Plaintiff did not always  
2 have psoriatic flare-ups in her hands, and when she did, they did not  
3 last for twelve months duration. (AR 16.) He rejected the limitation  
4 to repetitive tasks because he found that Plaintiff had a Bachelor of  
5 Arts degree, and the record did not demonstrate significant  
6 concentration deficits. (Id.)

7 Plaintiff correctly states that these opinions constitute "expert  
8 opinion evidence of non-examining sources" that the ALJ is required to  
9 give some weight to, unless he rejects them. (See JS at 6).  
10 Plaintiff then argues that because the ALJ's determination of  
11 Plaintiff's RFC did not include these specific limitations, the ALJ  
12 erred in considering the evidence.

13 Plaintiff concedes, however, that the ALJ is not bound by any  
14 findings made by state agency medical or psychological consultants  
15 (see JS at 5, citing 20 C.F.R. § 404.1527(e)(2)(I)). In fact, when  
16 there are conflicting medical opinions, the ALJ's decision is  
17 sufficient even if he rejects an expert's opinion so long as he cites  
18 specific and legitimate reasons supported by substantial evidence.  
19 Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Furthermore,  
20 the ALJ need not accept the opinion of any physician if the opinion is  
21 brief, conclusory, or inadequately supported by clinical findings.  
22 Id. Therefore, the ultimate question is whether substantial evidence<sup>1</sup>  
23 supported the ALJ's findings.

24 First, with respect to the ALJ's finding that Plaintiff was not  
25 limited to one-two step repetitive tasks, the Court finds that the

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27 <sup>1</sup> Substantial evidence is defined as "such relevant evidence  
28 as a reasonable mind might accept as adequate to support a  
conclusion." Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995).

1 record adequately supports this conclusion. It was reasonable for the  
2 ALJ to conclude that a claimant with a bachelors degree does not have  
3 such a debilitating concentration deficit to render her unable to  
4 perform work. See Macri v. Chater, 93 F.3d 540, 544 (9th Cir. 1996)  
5 (ALJ entitled to draw inferences logically flowing from evidence).  
6 More importantly, the ALJ noted that Dr. Linda Smith, a consultative  
7 psychiatrist, opined that Plaintiff had no trouble concentrating. (AR  
8 14; see AR 206 ("She did not have any trouble concentrating today.")).  
9 In fact, Dr. Smith found that Plaintiff's thought processes,  
10 intellectual functioning, memory and ability to make abstractions were  
11 all intact. (AR 206-07). It was appropriate for the ALJ to give  
12 greater weight to Dr. Smith's findings than state agency physician Dr.  
13 Khan's since the Ninth Circuit has long established that "greater  
14 weight is accorded to the opinion of an examining physician than a  
15 non-examining physician." Jamerson v. Chater, 112 F.3d 1064, 1066  
16 (9th Cir. 1997) (quoting Andrews, 53 F.3d at 1040-41). Furthermore,  
17 Plaintiff's characterization that the ALJ rejected the state agency  
18 physician's opinion is not entirely accurate. On the contrary, the  
19 ALJ agreed with the essence of Dr. Khan's psychiatric opinion by  
20 finding that Plaintiff was capable of only occasional public  
21 interaction. (AR 12, 244). Therefore, Plaintiff's argument that the  
22 ALJ improperly considered the opinion of the state agency physician  
23 regarding her psychological limitations is unavailing.<sup>2</sup>

24 Second, as to the ALJ's finding that Plaintiff's hand limitations  
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26 <sup>2</sup> To the extent that Plaintiff's claim rests on the ALJ not  
27 specifying exactly how much weight he gave the state agency opinions  
28 (see JS at 4), this is also unavailing. The ALJ need not recite magic  
words so long as he offers specific and legitimate explanations.  
Magallanes v. Bowen, 881 F.2d 747, 755 (9th Cir. 1989).

1 were not warranted, this too is supported by substantial evidence.  
2 The ALJ rejected this opinion because Plaintiff did not always have  
3 psoriatic flare-ups in her hands, and they did not last for twelve  
4 months time.<sup>3</sup> (AR 16). Plaintiff's treatment records show  
5 inconsistent flare-ups that did not last longer than twelve months in  
6 time. For example, as the ALJ noted, Plaintiff's psoriasis was under  
7 "good control" in January 2008. (AR 14, citing AR 359-60). In  
8 November 2008 and February 2009, her symptoms showed improvement. (AR  
9 14, citing AR 488-89). Again, in October 2009, Plaintiff's treating  
10 doctor found that her psoriasis was stable. (AR 14, citing 489). In  
11 January 2010, she reported that her psoriasis was improving. (AR 14,  
12 citing 485). In July 2010, her doctor found that the psoriatic  
13 arthritis was "fairly controlled." (AR 475). Therefore, it is clear  
14 from the ALJ's opinion that he sufficiently considered the record and  
15 rejected Dr. Khan's opinion about Plaintiff's hand limitations based  
16 on substantial evidence.

## 17 18 II

### 19 THE ALJ PROPERLY CONSIDERED PLAINTIFF'S DAILY ACTIVITIES IN 20 DETERMINING WHETHER SHE WAS DISABLED

21 Plaintiff's second claim is that the ALJ improperly considered  
22 her daily activities in evaluating whether she could perform full-time  
23 competitive substantial gainful activity. (JS at 11).

24 As an initial matter, the Court finds that a fair reading of the  
25 ALJ's decision indicates that Plaintiff unfairly characterizes the

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27 <sup>3</sup> For purposes of disability insurance benefits, "disability"  
28 is defined as a medically determinable physical or mental impairment  
that can be expected to last or has lasted for a continuous period of  
not less than twelve months. 42 U.S.C. § 423(d)(1)(A).

1 ALJ's actions. The ALJ discussed Plaintiff's daily activities in  
2 analyzing whether her symptoms were disabling and limited her capacity  
3 to work. (See AR 15). The ALJ found inconsistencies between  
4 Plaintiff's reported daily activities and the presence of an  
5 incapacitating or debilitating medical condition. (Id.)

6 Plaintiff's argument fails because there is no question that  
7 analysis of daily activities is allowed. See 20 C.F.R. §  
8 416.929(c)(3)(I) (expressly listing "[y]our daily activities" as a  
9 factor relevant to symptoms such as pain). In addition, on this point  
10 the Court agrees with the Commissioner that Ninth Circuit cases have  
11 long allowed ALJ's to explicitly consider daily activities in  
12 determining whether a claimant is credible in their testimony. See  
13 Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989) (daily activities can  
14 discredit excess pain allegation if claimant is able to spend a  
15 substantial part of the day performing activities transferable to a  
16 work setting); Thomas, 278 F.3d at 958-59 (chores such as cooking,  
17 laundry, washing dishes, and shopping suggested claimant was not as  
18 limited and as in pain as she testified); Stubbs-Danielson v. Astrue,  
19 539 F.3d 1169, 1175 (9th Cir. 2008) (affirming ALJ's finding that  
20 daily activities suggested claimant could be capable of performing  
21 basic demands of competitive, remunerative, unskilled work on  
22 sustained basis). Here, the ALJ found that the record indicated that  
23 Plaintiff could drive and shop, do household chores, cook, run  
24 errands, and pay bills. (AR 15, citing AR 32, 159, 206-08, 408).  
25 Such daily activities allow the ALJ to reasonably conclude that  
26 Plaintiff's psoriatic arthritis and anxiety disorder are not as

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1 debilitating as she claims.<sup>4</sup>

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3 **III**

4 **THE ALJ PROPERLY ASSESSED PLAINTIFF'S RFC**

5 Plaintiff's third claim is that the ALJ improperly assessed her  
6 RFC because he rejected the state agency physician and psychiatrist's  
7 opinions. (JS at 16). This contention is essentially a reiteration  
8 of Plaintiff's first claim and is foreclosed by the Court's analysis  
9 of that claim. Accordingly, the Court finds that the ALJ properly  
10 assessed Plaintiff's RFC.

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12 **IV**

13 **THE ALJ PROPERLY POSED A COMPLETE HYPOTHETICAL**  
14 **TO THE VOCATIONAL EXPERT**

15 Plaintiff's fourth claim is that the ALJ posed an incomplete  
16 hypothetical to the vocational expert at the administrative hearing  
17 because he did not account for Dr. Khan's finding that Plaintiff was  
18 limited to one-two step repetitive tasks. (JS at 19; see AR 46-47).

19 Although Plaintiff correctly states that a hypothetical must  
20 consider all of a claimant's limitations or else be deemed of no  
21 evidentiary value (id.), the Ninth Circuit has found that an ALJ does  
22 not err when he omits limitations in hypothetical questions to the

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<sup>4</sup> The Court notes that the ALJ also discussed the fact that  
25 Plaintiff told her treating doctor in June 2010 that she  
26 wanted to conceive and have a child, heightening demands on her  
27 physical and mental activity. (AR 15, citing AR 450, 452). Although  
28 not an ordinary "daily activity," conceiving and having a child  
presents at least some difficulty functioning, and the fact that  
Plaintiff wanted to do so can be used by the ALJ to discredit  
testimony of a totally debilitating impairment. See Molina v. Astrue,  
674 F.3d 1104, 1113 (9th Cir. 2012).

1 vocational expert that claimant claimed but failed to prove. Rollins  
2 v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001) (ALJ did not err  
3 because his omissions were supported by substantial evidence); see  
4 also Bayliss v. Barnhart, 427 F.3d 1211, 1217 (9th Cir. 2005) (same).  
5 As such, Plaintiff's fourth claim is unavailing because it appears to  
6 be a reiteration of her first. Accordingly, the Court finds that the  
7 ALJ posed a complete hypothetical to the vocational expert.

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9 V

10 THE ALJ MADE PROPER CREDIBILITY FINDINGS

11 Plaintiff's fifth argument takes issue with the ALJ's finding  
12 Plaintiff's testimony at the hearing not entirely credible. (See AR  
13 13). First, Plaintiff argues that the ALJ erred by not indicating  
14 which specific statements he accepted or rejected. (JS at 21).  
15 Second, Plaintiff contends that the ALJ erred because he rejected  
16 Plaintiff's testimony without providing clear and convincing evidence.  
17 (JS at 24).

18 Plaintiff's first contention is unavailing because the ALJ's  
19 findings are not invalid simply because he failed to quote from  
20 Plaintiff's testimony. After all, he did cite to her testimony in  
21 making his findings. (See AR 11). Therefore, the main question  
22 before the Court is whether the ALJ's credibility finding was specific  
23 and supported by the record. See Fair, 885 F.2d at 603; Thomas, 278  
24 F.3d at 958-59.

25 Subjective complaints of pain or other symptomology in excess of  
26 what an impairment would normally be expected to produce are subject  
27 to the credibility assessment of an ALJ. Rollins, 261 F.3d at 856-57.

28 In order to find that a claimant's subjective complaints are not



1 credible, an ALJ "must specifically make findings that support this  
2 conclusion," Bunnell, 947 F.2d 341, 345 (9th Cir. 1991) and provide  
3 "clear and convincing reasons." Rollins, 261 F.3d at 857. The  
4 difficulty with the ALJ's decision, however, lies in the fact that the  
5 ALJ did not separate his credibility findings from his assessment of  
6 the medical opinion. Nevertheless, the Court can decipher which  
7 particular analyses articulated within the ALJ's decision support his  
8 credibility finding. Because an ALJ's credibility assessment usually  
9 incorporates analysis from other steps of the ALJ's evaluation, as  
10 long as the ALJ's reasons are clearly and identifiably articulated  
11 elsewhere in the decision, the ALJ's credibility finding satisfies the  
12 standard from Bunnell and Rollins.

13 First, as the ALJ explained, the objective medical evidence does  
14 not comport with Plaintiff's testimony regarding her pain and  
15 limitations. (AR 13-16). Although the lack of objective evidence,  
16 standing alone, is insufficient to reject subjective complaints, it  
17 is, nevertheless, one of the considerations. Bunnell, 947 F.2d at  
18 345. Here, as the Court discussed in addressing Plaintiff's first  
19 claim, the ALJ noted that treatment notes from Plaintiff's doctors  
20 showed that the psoriasis was either under control or stable and  
21 improving. (AR 14; see AR 359, 356, 488-89, 486, 475). These notes  
22 contradict Plaintiff's testimony at the hearing about her physical  
23 limitations. (AR 38-41).

24 Second, the ALJ also noted that Plaintiff was non-compliant with  
25 her medication for psoriatic arthritis. (AR 15). Ninth Circuit case  
26 law approves the use of treatment history to evaluate a claimant's  
27 credibility. See, e.g., Orn v. Astrue, 495 F.3d 625, 638 (9th Cir.  
28 2007) (allowing ALJ to discredit claimant if he failed to seek

1 treatment but complained about pain or failed to follow prescribed  
2 treatment). Here, in January 2010 Plaintiff complained of pain in  
3 various parts of her body but failed to take any medication; in July  
4 2010 she failed to take her medication for two months. (AR 14, see AR  
5 477, 485). Also of significance is the ALJ's finding that despite  
6 Plaintiff's record of mental health visits, there was no indication  
7 anywhere that she was precluded from work activity. (AR 15).  
8 Therefore, based on Plaintiff's treatment history, the ALJ had reason  
9 to discredit her testimony.

10 Next, the ALJ found that Plaintiff had obtained a dual major  
11 Bachelor of Arts degree but made no serious attempts to gain  
12 employment besides briefly in 1995-1996. (AR 15, see AR 126). Work  
13 history is a legitimate factor in determining whether a claimant is  
14 credible. See Thomas, 278 F.3d at 959. Therefore, the ALJ  
15 appropriately discredited Plaintiff based on her work history.

16 Finally, the ALJ took note of Plaintiff's daily activities and  
17 concluded that they were inconsistent with her testimony at the  
18 hearing regarding the pain and limitations she experienced. (AR 13,  
19 15). As the Court discussed with greater detail in analyzing  
20 Plaintiff's second claim, daily activities are a permissible factor in  
21 considering a claimant's credibility. See, e.g., Fair, 885 F.2d at  
22 603. Given Plaintiff's daily activities, like household chores,  
23 driving, laundry, and others and her intention of conceiving and  
24 having a child, the ALJ could infer that these activities were  
25 inconsistent with her claimed limitations and pain.

26 For the foregoing reasons, the Court cannot second-guess the  
27 ALJ's credibility assessment, since it is based on substantial  
28 evidence in the record, and is supported by specific and legitimate

1 reasons.

2 The decision of the ALJ will be affirmed. The Complaint will be  
3 dismissed with prejudice.

4 **IT IS SO ORDERED.**

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6 DATED: June 3, 2013

/s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE

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