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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

JAMI S. VOGELSANG,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. 8:17-cv-01921-JDE

MEMORANDUM OPINION AND
ORDER

Plaintiff Jami S. Vogelsang (“Plaintiff”) filed a Complaint on October 31, 2017, seeking review of the Commissioner’s denial of her application for disability insurance benefits (“DIB”). The parties filed a Joint Submission (“Jt. Stip.”) regarding the issues in dispute on July 11, 2018. The matter now is ready for decision.

I.

BACKGROUND

Plaintiff filed her application for DIB on May 14, 2013, alleging disability on March 31, 2012. Administrative Record (“AR”) 152-53. After her

1 application was denied initially (AR 71) and on reconsideration (AR 104-08),
2 Plaintiff requested an administrative hearing (AR 111-12), which was held on
3 November 24, 2015. AR 38, 40. Plaintiff, represented by counsel, appeared
4 and testified at the hearing before an Administrative Law Judge (“ALJ”), as
5 did a vocational expert. AR 38-69.

6 On March 14, 2016, the ALJ issued a written decision finding Plaintiff
7 was not disabled. AR 21-32. The ALJ found that Plaintiff had not engaged in
8 substantial gainful activity since the alleged disability onset date and suffered
9 from the following severe impairments: history of left thoracoscopic resection
10 of apical mass with residual brachial plexopathy of the left upper extremity;
11 migraines; hypothyroidism; obesity; and depression. AR 23. The ALJ found
12 Plaintiff did not have an impairment or combination of impairments that met
13 or medically equaled a listed impairment. AR 23-24. The ALJ also found
14 Plaintiff had the residual functional capacity (“RFC”) to perform light work,
15 with the following limitations: Plaintiff could (1) lift and carry 10 pounds
16 frequently, and 20 pounds occasionally, while being able to push and pull
17 within those weight restrictions, except that she was limited to occasional
18 pushing and pulling with her left upper extremity; (2) occasionally handle and
19 finger with her non-dominant left upper extremity; (3) not be exposed to direct
20 sunlight; and (4) occasionally be exposed to temperature extremes, excessive
21 noise, environmental irritants, hazardous machinery, and unprotected heights.
22 AR 25. The ALJ also found she was limited to unskilled work with no fast-
23 paced production requirements while being able to deal with the public. Id.
24 The ALJ further found Plaintiff was incapable of performing her past relevant
25 work as a claims examiner and pharmacy technician. AR 30. However, the
26 ALJ found, considering Plaintiff’s age as a “younger individual,” her
27 education, work experience, and RFC, jobs existed in significant numbers in
28 the national economy that Plaintiff could perform. AR 31-32. Accordingly, the

1 ALJ concluded that Plaintiff was not under a “disability,” as defined in the
2 Social Security Act. AR 32.

3 On September 1, 2017, the Appeals Council denied Plaintiff’s request for
4 review, making the ALJ’s decision the Commissioner’s final decision. AR 1-7.

5 III.

6 LEGAL STANDARDS

7 A. Standard of Review

8 Under 42 U.S.C. § 405(g), a district court may review the
9 Commissioner’s decision to deny benefits. The ALJ’s findings and decision
10 should be upheld if they are free from legal error and supported by substantial
11 evidence based on the record as a whole. Brown-Hunter v. Colvin, 806 F.3d
12 487, 492 (9th Cir. 2015) (as amended); Parra v. Astrue, 481 F.3d 742, 746 (9th
13 Cir. 2007). Substantial evidence means such relevant evidence as a reasonable
14 person might accept as adequate to support a conclusion. Lingenfelter v.
15 Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less
16 than a preponderance. Id. To determine whether substantial evidence supports
17 a finding, the reviewing court “must review the administrative record as a
18 whole, weighing both the evidence that supports and the evidence that detracts
19 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720
20 (9th Cir. 1998). “If the evidence can reasonably support either affirming or
21 reversing,” the reviewing court “may not substitute its judgment” for that of
22 the Commissioner. Id. at 720-21; see also Molina v. Astrue, 674 F.3d 1104,
23 1111 (9th Cir. 2012) (“Even when the evidence is susceptible to more than one
24 rational interpretation, [the court] must uphold the ALJ’s findings if they are
25 supported by inferences reasonably drawn from the record.”). However, a
26 court may review only the reasons stated by the ALJ in his decision “and may
27 not affirm the ALJ on a ground upon which he did not rely.” Orn v. Astrue,
28 495 F.3d 625, 630 (9th Cir. 2007).

1 Lastly, even when the ALJ commits legal error, the Court upholds the
2 decision where that error is harmless. Molina, 674 F.3d at 1115. An error is
3 harmless if it is “inconsequential to the ultimate nondisability determination,”
4 or if “the agency’s path may reasonably be discerned, even if the agency
5 explains its decision with less than ideal clarity.” Brown-Hunter, 806 F.3d at
6 492 (citation omitted).

7 **B. Standard for Determining Disability Benefits**

8 When the claimant’s case has proceeded to consideration by an ALJ, the
9 ALJ conducts a five-step sequential evaluation to determine at each step if the
10 claimant is or is not disabled. See Molina, 674 F.3d at 1110.

11 First, the ALJ considers whether the claimant currently works at a job
12 that meets the criteria for “substantial gainful activity.” Id. If not, the ALJ
13 proceeds to a second step to determine whether the claimant has a “severe”
14 medically determinable physical or mental impairment or combination of
15 impairments that has lasted for more than 12 months. Id. If so, the ALJ
16 proceeds to a third step to determine whether the claimant’s impairments
17 render the claimant disabled because they “meet or equal” any of the “listed
18 impairments” set forth in the Social Security regulations at 20 C.F.R. Part 404,
19 Subpart P, Appendix 1. See Rounds v. Comm’r Soc. Sec. Admin., 807 F.3d
20 996, 1001 (9th Cir. 2015).

21 If the claimant’s impairments do not meet or equal a “listed
22 impairment,” before proceeding to the fourth step the ALJ assesses the
23 claimant’s RFC, that is, what the claimant can do on a sustained basis despite
24 the limitations from his impairments. See 20 C.F.R. §§ 404.1520(a)(4),
25 416.920(a)(4); Social Security Ruling (“SSR”) 96-8p. After determining the
26 claimant’s RFC, the ALJ proceeds to the fourth step and determines whether
27 the claimant has the RFC to perform his past relevant work, either as he
28 “actually” performed it when he worked in the past, or as that same job is

1 “generally” performed in the national economy. See Stacy v. Colvin, 825 F.3d
2 563, 569 (9th Cir. 2016).

3 If the claimant cannot perform his past relevant work, the ALJ proceeds
4 to a fifth and final step to determine whether there is any other work, in light of
5 the claimant’s RFC, age, education, and work experience, that the claimant
6 can perform and that exists in “significant numbers” in either the national or
7 regional economies. See Tackett v. Apfel, 180 F.3d 1094, 1100-01 (9th Cir.
8 1999). If the claimant can do other work, he is not disabled; but if the claimant
9 cannot do other work and meets the duration requirement, the claimant is
10 disabled. See Tackett, 180 F.3d at 1099.

11 The claimant generally bears the burden at each of steps one through
12 four to show that he is disabled, or that he meets the requirements to proceed
13 to the next step; and the claimant bears the ultimate burden to show that he is
14 disabled. See, e.g., Molina, 674 F.3d at 1110; Johnson v. Shalala, 60 F.3d
15 1428, 1432 (9th Cir. 1995). However, at Step Five, the ALJ has a “limited”
16 burden of production to identify representative jobs that the claimant can
17 perform and that exist in “significant” numbers in the economy. See Hill v.
18 Astrue, 698 F.3d 1153, 1161 (9th Cir. 2012); Tackett, 180 F.3d at 1100.

19 IV.

20 DISCUSSION

21 The parties present two disputed issues (Jt. Stip. at 4):

22 Issue No. 1: Whether the ALJ properly determined that Plaintiff’s
23 migraines do not equal a listing; and

24 Issue No. 2: Whether the ALJ properly considered Plaintiff’s subjective
25 statements about her limitations.

26 A. Listing

27 Plaintiff argues the ALJ erred by determining that Plaintiff’s migraine
28 headaches do not meet Listing 11.03, which pertains to non-convulsive (petite

1 mal) seizures, “because an ALJ is not a medical expert and he is not qualified
2 to make the medical call on whether the claimant equals a listed impairment.”
3 Jt. Stip. at 5. She contends the ALJ’s analysis is faulty because, by discussing
4 Listing 11.03, the ALJ should have also evaluated whether Plaintiff met
5 Listing 11.02, which pertains to grand mal seizures. Jt. Stip. at 6-7.

6 **1. Applicable Law**

7 At the Step Three, ALJs determine if an impairment or combination of
8 impairments “meets or equals” an impairment listed in 20 C.F.R. Part 404,
9 subpart P, appendix 1 (“the Listings”). 20 C.F.R. §§ 404.1525(a), 404.1526,
10 416.925(a), 416.926. The Listings describe impairments that would prevent an
11 adult, regardless of age, education, or work experience, from performing any
12 gainful activity. An impairment meets a Listing when all of the medical criteria
13 required are satisfied. Tackett, 180 F.3d at 1099 (“To meet a listed impairment,
14 a claimant must establish that he or she meets each characteristic of a listed
15 impairment relevant to his or her claim.”). If an “impairment meets or equals
16 one of the listed impairments, the claimant is conclusively presumed to be
17 disabled.” Bowen v. Yuckert, 482 U.S. 137, 141 (1987).

18 Claimants bear the burden of establishing a prima facie case of disability
19 under the Listings. See Thomas v. Barnhart, 278 F.3d 947, 955 (9th Cir. 2002).
20 “To equal a listed impairment, a claimant must establish symptoms, signs, and
21 laboratory findings at least equal in severity and duration to the characteristics
22 of a relevant listed impairment” Tackett, 180 F.3d at 1099.

23 **2. Analysis**

24 Plaintiff contends the ALJ erred by making the listing determination
25 because she is not a medical expert, and by discussing Listing 11.03 but at the
26 same time failing to discuss Listing 11.02.

27 The ALJ determined Plaintiff did “not have an impairment or
28 combination of impairments that meets or medically equals the severity of one

1 of the listed impairments.” AR 24. As part of this finding, the ALJ specifically
2 mentioned that Plaintiff did not meet or equal Listings 9.00, 11.03, 11.14, and
3 12.04. AR 24-25. Later in the decision, the ALJ discussed Plaintiff’s migraine
4 headaches and noted they do not have a specific medical listing, but Listing
5 11.03 was analogous for considering medical equivalence. AR 28. The ALJ
6 mentioned there are essential components of 11.03 that are analogous to
7 migraines, including the requirement of a documented, detailed description of
8 a typical headache event pattern, and that the migraines should occur more
9 frequently than once weekly despite at least three months of treatment. Id. The
10 ALJ found Plaintiff’s condition did not equal the Listing for several reasons,
11 including that Plaintiff did not have migraine events or episodes occurring
12 more than once weekly that lasted for a continuous 12-month period. Id. See
13 also 20 C.F.R. § 404.1520(d) (explaining that, before considering the listings,
14 claimant’s impairment must meet the duration requirement).

15 Plaintiff seems to contend that, because the ALJ determined that Listing
16 11.03 was “worthy of a detailed analysis,” she erred by not also discussing
17 Listing 11.02. See Jt. Stip. at 8. But, she acknowledges “a statement that the
18 individual’s impairment(s) does not medically equal a listed impairment
19 constitutes sufficient articulation for this finding.” Jt. Stip. at 6; see also Jt.
20 Stip. at 8 (“If the ALJ had remained silent on the equaling issue his [sic]
21 decision may have passed muster.”); Jt. Stip. at 18 (“if the ALJ had simply
22 stated that [Plaintiff] did not equal the listing this likely would have been
23 sufficient”). Plaintiff points to no authority supporting the proposition that,
24 simply because the ALJ performed a detailed analysis of one listing, which she
25 was not required to perform, an obligation then arose to discuss another listing.

26 Moreover, “[a]n ALJ is not required to discuss the combined effects of a
27 claimant’s impairments or compare them to any listing in an equivalency
28 determination, unless the claimant presents evidence in an effort to establish

1 equivalence.” Burch v. Barnhart, 400 F.3d 676, 683 (9th Cir. 2005). Plaintiff
2 does not dispute Defendant’s observation that Plaintiff failed to present
3 argument or evidence “to establish equivalence” during the proceedings before
4 the ALJ. Jt. Stip. at 18. Under such circumstances, “the ALJ did not need to
5 explain [the] conclusion.” See Pruitt v. Comm’r Soc. Sec., 612 F. App’x 891,
6 894 (9th Cir. 2015) (finding that, because claimant “failed to present a theory
7 to the ALJ as to how her combined impairments meet or equal [a listing],” the
8 ALJ was not required to explain his conclusion); Gonzalez v. Sullivan, 914
9 F.2d 1197, 1201 (9th Cir. 1990) (stating that it is unnecessary for the ALJ to
10 explain why a claimant failed to satisfy every section of the Listing of
11 impairments). Because Plaintiff did not present evidence at the administrative
12 level that her impairments equaled listing 11.02, the ALJ did not err by not
13 identifying specific evidence to support her conclusion at Step Three.

14 Notably, Plaintiff also did not attempt to show she met or equaled listing
15 11.02 before the Appeals Council. In fact, she stated she “does not argue that
16 she equals a listing” (AR 244), and instead challenged the ALJ’s Step Five and
17 credibility determinations. AR 244-45. Even here, Plaintiff fails to show she
18 equals the listing, failing to establish present medical findings equal in severity
19 to every criteria for the listing.¹ See Kennedy v. Colvin, 738 F.3d 1172, 1176

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21 ¹ To satisfy Listing 11.02, Plaintiff had to show she met the following criteria:
22 convulsive epilepsy (grand mal or psychomotor), documented by detailed
23 description of a typical seizure pattern, including all associated phenomena;
24 occurring more frequently than once a month in spite of at least 3 months of
25 prescribed treatment [,][w]ith [one of the following]: [d]aytime episodes (loss
26 of consciousness and convulsive seizures) or nocturnal episodes manifesting
27 residuals which interfere significantly with activity during the day.
28 20 C.F.R. Part 404, Subpart P, Appendix 1. Listing 11.02 also requires “[a]t least one
detailed description of a typical seizure,” including “the presence or absence of aura,
tongue bites, sphincter control, injuries associated with the attack, and postictal
phenomena.” 20 C.F.R. Part 404, Subpt. P, App. 1, Listing 11.00(A) (12/15/04 to
09/28/16). A reporting physician “should indicate the extent to which description of

1 (9th Cir. 2014) (“Listed impairments are purposefully set at a high level of
2 severity because the listings were designed to operate as a presumption of
3 disability that makes further inquiry unnecessary.”). Rather, Plaintiff appears
4 to ask the Court to find structural error requiring automatic remand simply
5 because the ALJ did not discuss Listing 11.02. See, e.g., Jt. Stip. at 9 (arguing
6 the Court “should remand this case with directions to the ALJ to fully and
7 fairly develop the record by either calling a medical expert to testify regarding
8 the equaling of the listing or to send out interrogatories to a medical expert so
9 that she can make an informed determination”). Plaintiff fails to show
10 prejudice. See Molina, 674 F.3d at 1115; Cruz v. Berryhill, 2018 WL 1709499,
11 at *3 (W.D. Wash. Apr. 9, 2018) (“Even if the ALJ did err in failing to explain
12 why Plaintiff did not satisfy any of the listings in Section 11.00, Plaintiff has
13 not shown that he actually does meet or equal any of the listings described in
14 Section 11.00, and therefore has failed to show how he was prejudiced by the
15 ALJ’s failure to specifically address the requirements of those listings.”)

16 Plaintiff has not met her burden of proving error, or that she meets the
17 criteria of Listing 11.02. The Court finds that the ALJ’s Step Three finding is
18 supported by substantial evidence.

19 **B. Plaintiff’s Subjective Symptom Testimony**

20 In Issue No. 2, Plaintiff argues the ALJ improperly discounted her
21 subjective symptom testimony.

22 **1. Applicable Law**

23 Where a disability claimant produces objective medical evidence of an
24 underlying impairment that could reasonably be expected to produce the pain

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26 seizures reflects his own observations and the source of ancillary information.” Id.
27 And “if professional observation is not available,” then “[t]estimony of persons other
28 than the claimant is essential for description of type and frequency of seizures.” Id.;
see also Mobbs v. Berryhill, 2017 WL 6759321, at *3-4 (W.D. Wash. Dec. 29, 2017).

1 or other symptoms alleged, absent evidence of malingering, the ALJ must
2 provide ““specific, clear and convincing reasons for’ rejecting the claimant’s
3 testimony regarding the severity of the claimant’s symptoms.” Treichler v.
4 Comm’r of Soc. Sec. Admin., 775 F.3d 1090, 1102 (9th Cir. 2014) (citation
5 omitted); Moisa v. Barnhart, 367 F.3d 882, 885 (9th Cir. 2004); see also 20
6 C.F.R. § 416.929. The ALJ’s findings “must be sufficiently specific to allow a
7 reviewing court to conclude that the [ALJ] rejected [the] claimant’s testimony
8 on permissible grounds and did not arbitrarily discredit the claimant’s
9 testimony.” Moisa, 367 F.3d at 885 (citation omitted). However, if the ALJ’s
10 assessment of the claimant’s testimony is reasonable and is supported by
11 substantial evidence, it is not the Court’s role to “second-guess” it. See Rollins
12 v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001). Finally, the ALJ’s credibility
13 finding may be upheld even if not all of the ALJ’s reasons for rejecting the
14 claimant’s testimony are upheld. See Batson v. Comm’r Soc. Sec. Admin, 359
15 F.3d 1190, 1197 (9th Cir. 2004).

16 **2. Analysis**

17 During the administrative hearing, Plaintiff testified a mass was found in
18 her chest in late 2011 and she underwent surgeries to have it extracted. AR 43.
19 After the second surgery, she developed severe left hand and arm pain, with a
20 burning, tingling, numbness, and weakness. AR 45-46. She has difficulty
21 picking up small items, like Q-tips or quarters, and she has difficulty gripping,
22 grasping, and typing with her left hand. AR 44-45. She drops things and can
23 carry only about five to ten pounds with her left arm. AR 47, 55. She is right
24 hand dominant, and can still drive, care for herself, vacuum, do laundry,
25 grocery shop, walk her dog, tend to her guinea pigs, and use the computer. AR
26 47-48, 50, 55. Due to her pain and fatigue, she has problems focusing on things
27 such as reading and watching television, as well as completing tasks. AR 47.
28 Her pain is constant all the way down her left arm to her hand, despite

1 medication. AR 45, 49, 52-53. The heat from taking baths, which she does
2 almost every night, helps, as does acupuncture. AR 50-51. She also has chronic
3 migraines occurring two to three times a month and lasting up to six hours,
4 with sensitivity to light, noise, and smell. AR 53-54, 56-57. However, if she
5 “catch[es]” her migraines early and takes her medication, she can get rid of
6 them. AR 56-57. She is depressed as everything weighs her down. AR 54.

7 The ALJ found Plaintiff’s medically determinable impairments could
8 reasonably be expected to cause the alleged symptoms, but her statements
9 “concerning the intensity, persistence[,] and limiting effects of these symptoms
10 [were] not entirely credible” for the reasons discussed in the decision. AR 28.
11 The ALJ concluded Plaintiff’s testimony about her depression was belied by
12 the objective medical evidence; delayed complaints of symptoms; lack of
13 aggressive treatment; symptom management with medication; and conflict
14 with psychological examinations. AR 27. Regarding her migraines, the ALJ
15 noted Plaintiff has a history of migraines, but found they were well controlled
16 until April 2015; the record did not show she complied with her neurologist’s
17 advice to complete a headache diary to identify triggers; and there was no
18 evidence that her migraines occurred more frequently than once a week despite
19 three months of treatment. AR 28. Finally, regarding her left upper extremity,
20 Plaintiff’s allegations of a disabling condition conflicted with opinions of State
21 agency medical consultants; her pain symptoms stabilized with medication; the
22 functionality of her left hand improved with physical therapy; and Plaintiff
23 admitted she was still highly functional in her daily activities. AR 29. As
24 explained below, the ALJ provided legally sufficient reasons for discrediting
25 Plaintiff’s subjective symptom testimony.

26 Preliminarily, the Court notes Plaintiff has challenged only one aspect of
27 the credibility determination: “Specifically, [Plaintiff contends that] the ALJ
28 failed to provide any specific reason to reject [Plaintiff]’s testimony that she

1 suffers from migraines 2-3 times per month that last from 1-3 days.” Jt. Stip. at
2 22; see also Jt. Stip. 35. Plaintiff does not discuss her testimony regarding
3 depression or left upper extremity limitations, or many of the ALJ’s reasons for
4 discounting testimony about those symptoms. Because the ALJ was required
5 to provide only one valid reason for this Court to uphold the credibility
6 finding, the Court could treat Plaintiff’s failure to address the other reasons as
7 waiver of the credibility determination. See Batson, 359 F.3d at 1196; Greger
8 v. Barnhart, 464 F.3d 968, 973 (9th Cir. 2006) (claimant waived issues not
9 raised before the district court); Williams v. Comm’r, Soc. Sec. Admin., 2018
10 WL 1709505, at *3 (D. Or. Apr. 9, 2018) (“Because the ALJ is only required to
11 provide a single valid reason for rejecting a claimant’s pain complaints, any
12 one of the ALJ’s reasons would be sufficient to affirm the overall credibility
13 determination.”); Owens v. Colvin, 2014 WL 5602884, at *4 (C.D. Cal. Nov.
14 4, 2014) (claimant’s failure to discuss, or even acknowledge, ALJ’s reliance on
15 certain reasons waived any challenge to those aspects of ALJ’s finding).
16 However, Court does not do so here, but it will limit its review to Plaintiff’s
17 subjective migraine headache complaints, and the reasoning for discounting
18 those complaints.

19 First, the ALJ discredited the severity of Plaintiff’s migraines because
20 they did not lead to significant symptoms until April 2015, which was years
21 into the relevant period. AR 28. “Impairments that can be controlled
22 effectively with medication are not disabling.” See Warre v. Comm’r Soc. Sec.
23 Admin., 439 F.3d 1001, 1006 (9th Cir. 2006). The medical record shows that,
24 in November 2011, Plaintiff had migraines, but they had been “well-
25 controlled.” AR 340. In April 2012, Dr. Thomas P. DiJulio also noted that
26 Plaintiff had a history of migraines, but that they occurred only “every 4
27 months or so.” AR 306. In March 2015, Plaintiff complained of migraines
28 during a routine check-up with Dr. Robert Moon. AR 647. Dr. Moon noted

1 Plaintiff had “unspecified migraines,” “without mention of intractable
2 migraine” and “without mention of status migrainosus.”² AR 648. Finally, in
3 April 2015, Plaintiff told Dr. Nancy Vu that she had “severe headaches” seven
4 days a month, many accompanied by nausea, blurred vision, poor sleep, and
5 sensitivity to bright lights. AR 629. These records and findings support the
6 ALJ’s conclusion. Plaintiff alleged she became disabled in March 2012, but her
7 migraines did not arise as a serious concern until years later, in early 2015. The
8 ALJ properly considered the fact that Plaintiff’s migraines were controlled for
9 a good portion of the relevant period. See Warre, 439 F.3d at 1006; Gaus v.
10 Colvin, 2014 WL 5581048, at *3 (D. Ariz. Oct. 31, 2014) (credibility
11 determination supported in part because claimant’s seizures were under fair or
12 good control during much of the relevant period).

13 Second, the ALJ discredited the migraine complaints because Plaintiff
14 did not appear to have followed her neurologist’s recommendation to complete
15 a headache diary. See AR 28, 630. In assessing credibility, “the ALJ may
16 consider . . . unexplained or inadequately explained failure . . . to follow a
17 prescribed course of treatment.” See Molina, 674 F.3d at 1112; see also
18 Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991) (same). The record
19 shows Plaintiff was repeatedly advised by her neurologist to complete a
20 headache diary, but there is no indication this was done.³ AR 625, 627, 630.
21 Accordingly, the ALJ properly relied on Plaintiff’s failure to follow this simple

22 ² An intractable migraine, also called “status migrainosus,” “describe[s] a persistent
23 migraine that is either 1) difficult to treat or [2]) fails to respond to standard and/or
24 aggressive treatments.” Swartz v. Berryhill, 2018 WL 1311425, at *2 (C.D. Cal. Mar.
25 13, 2018) (citation omitted).

26 ³ Such a diary might have also assisted Plaintiff with Issue No. 1. See Needham v.
27 Comm’r Soc. Sec., 2017 WL 4052184, at *11 (D. Or. Aug. 8, 2017) (mentioning
28 claimant’s headache diary, along with other medical evidence of record, as evidence
she met components of Listing 11.03).

1 treatment recommendation. See Molina, 674 F.3d at 1112; Bunnell, 947 F.2d
2 at 346; Edlin v. Colvin, 2014 WL 5500311, at *5 (E.D. Wash. Oct. 30, 2014)
3 (ALJ properly relied on claimant’s lack of compliance with treatment,
4 including failing to maintain a headache diary, in discounting credibility).

5 Third, and finally, the ALJ noted “[i]t is generally understood that
6 migraine headaches will rarely prevent a person from working for a continuous
7 12 months[,] but . . . there are exceptions.” AR 28. The ALJ then found a lack
8 of objective medical evidence showing Plaintiff’s migraines had been severe for
9 the continuous 12-month period, or showing frequency more than once weekly
10 despite at least three months of prescribed treatment. Id. “Although lack of
11 medical evidence cannot form the sole basis for discounting pain testimony, it
12 is a factor that the ALJ can consider in [her] credibility analysis.” Burch, 400
13 F.3d at 681; see also Rollins, 261 F.3d at 857. As discussed in Issue No. 1,
14 Plaintiff does not point to objective evidence supporting either deficiency;
15 instead she points to her own subjective complaint testimony and her
16 subjective disability reports. Jt. Stip. at 8, 19, 35-36.

17 Here, the ALJ carefully identified “which testimony she found not
18 credible, and . . . explained which evidence contradicted that testimony.”
19 Brown-Hunter, 806 F.3d at 494 (emphasis in original). The Court finds that
20 ALJ provided sufficiently specific, clear, and convincing reasons for
21 discounting Plaintiff’s migraine symptom testimony, specifically, the lack of
22 supporting objective medical evidence, which cannot be the only ground,
23 control of Plaintiff’s condition for a substantial part of the relevant period, and
24 failure to follow treatment recommendations , in discounting Plaintiff’s
25 subjective symptom testimony. Those grounds, together, are sufficient to
26 affirm the ALJ’s decision on the issue.

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IV.
ORDER

IT THEREFORE IS ORDERED that Judgment be entered affirming the decision of the Commissioner and dismissing this action with prejudice.

Dated: August 30, 2018



JOHN D. EARLY
United States Magistrate Judge